

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [REDACTED] 1957

No. [REDACTED] 11

JAMES E. YOUNGDAHL, W. CHANDLER, RUTH
RALPH, AMALGAMATED CLOTHING WORKERS
OF AMERICA, CIO, ET AL., PETITIONERS,

vs.

RAINFAIR, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

PETITION FOR CERTIORARI FILED JULY 20, 1956

CERTIORARI GRANTED OCTOBER 8, 1956

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 269

JAMES E. YOUNGDAHL, W. CHANDLER, RUTH
RALPH, AMALGAMATED CLOTHING WORKERS
OF AMERICA, CIO, ET AL., PETITIONERS,

vs.

RAINFAIR, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

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**IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS**

No. 3262-A

RAINFAIR, INC., Plaintiff,

v.

JAMES E. YOUNGDAHL, W. CHANDLER, RUTH GRANT, Amalgamated Clothing Workers of America, CIO, Norma Cobb, Hazel Kennedy, Pauline Midgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrep, Defendants.

COMPLAINT IN EQUITY.—Filed June 24, 1955

The Plaintiff is a Corporation duly chartered under the laws of Wisconsin, and duly authorized to do business in the State of Arkansas. It maintains its plant in Wynne, Arkansas, and manufactures mens slacks therein.

The defendants named in the caption are officers, directors and members of Amalgamated Clothing Workers of America, CIO, and are sued as such and as members of a class representing the membership and sympathizers of the aforesaid Union, the members and sympathizers of which constitute a class so numerous as to make it impractical to bring all of them before the court. The character of the right sought to be enforced against the class in this action is joint and common, and the individual defendants occupy a relation with reference to the Union and the members of the class, and are sued here in their individual members thereof to insure the adequate representation of all and representative capacity.

Since June 20, 1955 said defendants established a picket line at plaintiff's place of business in Wynne, Arkansas, with individuals carrying a placard reading,

"Rainfair Workers on Strike, Rainfair is unfair to its employees, Amalgamated Clothing Workers of America, CIO."

There is no dispute as to any matters between plaintiff and any of its employees.

[fol. 5] The placards and signs carried by the pickets stating that Rainfair, Inc., is unfair to its workers is misleading, creates a false innuendo and impression in the minds of the public that plaintiff is unfair to its employees, when in fact, defendants know that the plaintiff is not unfair to its employees.

Since June 20, 1955 defendants have established what purports to be a headquarters by setting up a tent, chairs, benches, table, cooking utensils, and installing a telephone on property approximately thirty-five (35) feet away from the entrance to the premises of plaintiff's plant, which is in fact a pretext for the purpose of mass congregating, loitering, and mass picketing.

(On June 20, 1955, sometime in the early morning the glass of a window in plaintiff's plant was smashed and a live snake thrown therein.)

On or about June 21, 1955, defendant Lois Morrison coerced and intimidated Dollie Jones and Nadine Johnson, employees of plaintiff, and ——— Jones, husband of Dollie Jones, by making the following statement:—

“You guys better shake your sheets tonight. You might find a snake in it.”

Since June 20, 1955, the defendants have, and continue to follow, after work hours, the automobiles of plaintiff's employees, gesturing, yelling and shouting offensive names, personal ridicule and epithets at them.

That since June 20, 1955 the defendants have, and continue to yell, shout, and gesticulate to plaintiff's employees when they go to and from plaintiff's place of business, or when they take a recess and come on the outside of plaintiff's plant, and to visitors and others doing business with plaintiff, [fol. 6] epithets, insults, abusive names and abusive language such as, “scabs, slaves, fuzzy-headed scabs, pony-tail scabs, and dam fools.”

That since June 20, 1955, and on various times defendants deliberately congregate in front of driveway and in the streets in front of plaintiff's plant so as to make it difficult for plaintiff's employees to have free ingress and egress into said plant.

On various occasions, since June 20, 1955 defendants have parked their automobiles on the public street and highway in front of plaintiff's plant so that to materially obstruct the traffic thereon.

That on June 20, 1955 and on various occasions thereafter officers, agents and employees of plaintiff have been caused great annoyance by telephone calls at all hours of the day and night.

Since June 20, 1955 defendants, their agents, sympathizers and persons working in concert with them have unlawfully assembled under, in and around the tent headquarters located across the street directly and in front of plaintiff's plant, and consistently and systematically jered at, made fun of, ridiculed, badgered, and used offensive language toward plaintiff's employees as they would go to and from plaintiff's plant, all of which plaintiff alleges tends toward a breach of the peace and other disorder.

That all of the aforesaid unlawful conduct, acts and practices complained of herein constitute, or tend toward, a breach of the peace.

The aforesaid unlawful acts, conduct and practices complained of is for the unlawful purpose of intimidating and coercing plaintiff's employees into joining the Amalgamated Clothing Workers of America, CIO.

[fol. 7] The plaintiff has no adequate remedy at law to prevent the aforesaid unlawful acts, conduct and practices; that plaintiff is being constantly molested, and has suffered and will continue to suffer irreparable injury and damage.

Unless defendants are restrained by this court from such unlawful acts, conduct and practices said defendants will continue same, and thereby cause great and irreparable damage for which it has or could have no remedy at law.

. Wherefore, premises considered, the plaintiff prays:—

That the Clerk of this Court be directed to issue summons upon each of the above named defendants, as provided by law.

That a temporary injunction issue immediately, enjoining the defendants, and each and every one of them, their agents, and employees, and the officers and members of Amalgamated Clothing Workers of America, CIO, and all other persons acting in concert with them, while on, ad-

jaacent or near plaintiff's premises located on Martin Drive, and Rowena Street, in Wynne, Arkansas, from doing the following things:—

From interfering with plaintiff's business, its customers and employees, and from picketing and patrolling, or causing to be picketed or patrolled the plaintiff's premises, and the sidewalks, streets, or other property adjacent to plaintiff's premises, with placards or banners designating said place of business as unfair to organized labor, or with placards otherwise so worded as to give said place of business such designation.

From accosting and detaining, or causing to be accosted or detained on the sidewalks or streets adjacent to or on plaintiff's premises any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing or working for plaintiff, or from calling their attention to any alleged unfairness of plaintiff or its place of business to organized labor.

[fol. 8] From threatening, intimidating or coercing any of plaintiff's officers, agents, or employees at any place.

From obstructing, or attempting to obstruct the free use of the streets adjacent to plaintiff's place of business, and the free ingress and egress to plaintiff's property.

From congregating and loitering on and around the headquarters as defined in this complaint.

That upon final hearing the temporary injunction be made permanent, and the plaintiff recover all costs of this action, and for all other general and equitable relief.

Respectfully submitted, Shaver & Shaver, Attorneys,
By: J. L. Shaver.

Duly sworn to by Peter A. Bonady. Jurat omitted in printing.

[File Endorsement omitted]

[fol. 9] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

TEMPORARY INJUNCTION—June 24, 1955

On this day, same being the 24th day of June, 1955, this cause came on for hearing upon the verified complaint of the plaintiff and oral testimony of Peter A. Bonady asking that a temporary restraining order be issued temporarily restraining defendants and each of them, their agents and employees, and all other persons acting in concert with them from interfering with plaintiff's business, its customers and employees and from picketing or patrolling, or causing to be picketed or patrolled, the plaintiff's premises and the sidewalks and streets adjacent to plaintiff's premises, with placards or banners designating said place of business as unfair to organized labor and the Court after being fully advised, finds:

That unless the defendants herein are restrained from the unlawful practices set forth in the above complaint and in the testimony of said Peter A. Bonady, that they will continue to do same and thereby cause plaintiff to suffer great and irreparable damages for which it has no adequate remedy at law.

It Is, Therefore, Considered, Adjudged and Decreed, by this Court, that the defendants, James E. Youngdahl, W. Chandler, Ruth Grant, Norma Cobb, Hazel Kennedy, Pauline Midgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrep, and each of them and their agents and employees and each and every one of the officers and members of Amalgamated Clothing Workers of America, CIO, and all other persons acting in concert with them, be and they are hereby temporarily enjoined while on, adjacent or near plaintiffs premises located on Martin [fol. 10] Drive and Rowena Street in Wynne, Arkansas, from interfering with plaintiff's business, its customers and employees and from picketing or patrolling, or causing to be picketed or patrolled, the plaintiffs' premises and the sidewalks, streets or other property adjacent to plaintiffs' premises with placards or banners designating said place

of business as unfair to organized labor or with placards otherwise so worded as to give said place of business such designation; that the defendants and each of them, their agents and employees and the officers and members of the above mentioned union, and all other persons acting in concert with them, be and they are each hereby restrained and enjoined from accosting and detaining, or causing to be accosted or detained, on the sidewalks or streets adjacent to or on plaintiff's premises any person or persons seeking to enter or depart from said place of business for the purpose of di-suading them from patronizing or working for plaintiff or from calling their attention to any alleged unfairness of plaintiff or its place of business to organized labor; from threat-ing, intimidating or coercing any of the officers, agents, or employees of plaintiff at any place; from loitering and congregating around and under the tent and upon the property that is used as headquarters, located directly across Rowena Street in front of plaintiff's premises; and from obstructing, or attempting to obstruct, the free use of the streets adjacent to plaintiff's place of business and the free ingress and egress to plaintiff's property until the further order of this Court.

This is a temporary injunction and the defendants and each of them may show cause upon reasonable notice to plaintiff's attorney why this temporary restraining order should be modified or dissolved.

[fol. 11] This order will become effective when plaintiff has filed with the Clerk of this Court an injunction bond in the sum of \$500.00 conditioned as provided by law.

That the clerk of this Court is directed to issue summons upon each of the above named defendants, warning them to answer herein as provided by law and to endorse this order upon said summons by attaching a certified copy of same thereto. The Sheriff of Cross County, Arkansas, is hereby directed to serve such summons and restraining order upon each of the said defendants.

Ford Smith, Chancellor.

[File endorsement omitted.]

[fol. 14] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

MOTION TO VACATE TEMPORARY INJUNCTION—
Filed June 30, 1955

Comes the defendants by their attorneys and moves that the Temporary Injunction granted herein on June 24, 1955, be vacated on the authority of Local No. 802 v. Asimos, 216 Ark. 694, 227 S.W. (2d) 154, for the following reasons:

(1) The Injunction as previously written violates the right of free speech, as guaranteed by the 14th Amendment to the Constitution of the United States.

(2) No act of violence or breach of the peace has occurred, which has grown out of the picketing.

(3) The defendants herein have not engaged in mass picketing.

(4) The picketing herein was not for an illegal purpose, but was for the purpose of securing recognition of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., which is a legal objective under both State and Federal Law.

Respectfully submitted, McMath, Leatherman, &
Woods, Attorneys, By: _____

[File endorsement omitted.]

[fol. 15] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

AMENDMENT TO MOTION TO VACATE TEMPORARY INJUNCTION
—Filed July 1, 1955

Comes the defendants by their attorneys with an Amendment to Motion to Vacate Temporary Injunction by clarifying Section (4) of said Motion to read as follows:

(4) The picketing herein was not for an illegal purpose, but originally was for the purpose of securing recognition

of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., and redress for unfair labor practices; and the picketing, in the second instance, was for the purpose -- securing redress for continuing unfair labor practices, which are legal objectives under both State and Federal Law.

Respectfully submitted, McMath, Leatherman & Woods, Attorneys, By: Henry Woods

[File endorsement omitted.]

[fol. 16] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

AMENDMENT TO COMPLAINT—Filed July 20, 1955

Comes the plaintiff by leave of court, and files this amendment to the Complaint.

The public policy of the State of Arkansas with reference to the rights of labor are defined in Amendment #34 of the Constitution as follows:

“Sec. 1. Discrimination for or against union labor prohibited. No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.”

Also, the 1947 Legislature passed Act No. 101 (Arkansas Statutes 81-201—205 inc.) entitled “An Act for the enforcement of the provisions of Amendment #34 to the Constitution and for other purposes.” The public policy

of the State of Arkansas with reference to organized and unorganized labor is defined in Section 1 as follows:

"Sec. 1. Freedom of organized labor to bargain collectively and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment 34 to the Constitution."

Section 2 of the Act provides that no person shall be denied employment because of membership in, or affiliation with a labor union; nor shall any person be denied employment because of failure or refusal to join or affiliate with a labor union.

[fol. 17] The Legislature also passed Act 193 of the Acts of 1943 (81-206-209 inc., Arkansas Statutes) which made it unlawful to use force or violence or threats thereof to prevent or attempt to prevent any person from engaging in any lawful vocation and provided penalties for the violation thereof; making it unlawful for any person acting in concert with other persons to assemble and prevent or attempt to prevent by force or violence any person from engaging in a lawful vocation, and making it unlawful to encourage any such unlawful assemblage, and for providing penalties for the violation thereof.

The purpose of the picketing and the unlawful assemblage, as shown by the testimony in this case violates the public policy and statutes of this state, and decisions of the Supreme Court of this state, in that it sought through a pattern of violence, unlawful conduct, threat, ridicule and jeers to so intimidate the workers in the plaintiff's plant, who were not members of the union, to join the Amalgamated Clothing Workers of America, CIO.

The above picketing was also contrary to the public policy of the state of Arkansas in that the pickets sought by violence, threats, intimidation and coercion to compel the plaintiff to coerce its employees choice of a bargaining representative, and thereby compel plaintiff to abide by the union's policy instead of the state's policy.

Wherefore, plaintiff prays that it be permitted to amend its complaint in the following particulars, and that in addition to the prayer set forth in said complaint that the pick-

eting be declared to be for an unlawful purpose and contrary to the public policy and laws of the State of Arkansas.

Respectfully submitted, Shaver & Shaver, Attorneys
for Plaintiff, By: J. L. Shaver

[File endorsement omitted.]

[fol. 18] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

ORDER TO SHOW CAUSE—July 20, 1955

During the hearing on motion of defendants to dissolve the temporary injunction issued herein, which hearing was held at the Cross County Courthouse on July 1, 1955, the plaintiff offered in evidence a large amount of broken glass that plaintiff alleged was found on Rowena Street opposite plaintiff's plant, and in the parking area around plaintiff's plant on Tuesday, June 28, 1955, and the Court refused to permit the introduction of said testimony and glass as evidence because these acts occurred subsequent to the issuance of the temporary restraining order herein on 24th day of June, 1955. The Court on its own motion turned such glass over to Jack Cobb, Chief of Police, City of Wynne, Arkansas, and directed him to ascertain the persons that broke said glass and scattered same upon said highway. The said Jack Cobb has reported to the Court that Thomas Cobb and Jerry Hamrick were the persons who had done said acts, and that Thomas Cobb is a brother of Mildred Tacker, one of the persons who was picketing plaintiff's plant, and that Jerry Hamrick is the son of Lee Hamrick, a former employee of the plaintiff's plant, and a sympathizer of the cause of the persons and organizations that were picketing said plant.

The Court on its motion hereby directs J. W. McElroy, Jr., Clerk of said Court, to issue a Notice, attaching a copy of this order thereto, notifying McMath, Leatherman & Woods, Attorneys for the Defendants, and specifically

Thomas Cobb, Mildred Tacker, Lee Hamrick and Jerry [fol. 19] Hamrick, to appear at the Chancery Court Room in the Cross County Courthouse on July 27, 1955, and to show cause why said defendants, and Thomas Cobb, Jerry Hamrick, Mildred Tacker and Lee Hamrick should not be adjudged in contempt of court for violating the temporary injunction issued herein.

Dated this 20th day of July, 1955.

Ford Smith, Chancellor.

[File endorsement omitted.]

[fol. 20] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

ANSWER—Filed July 27, 1955

Come now the defendants and file their answer herein as follows:

I

Defendants admit that they are officers, directors, members or applicants for membership in the Amalgamated Clothing Workers of America, CIO:

II

Defendants further admit that they established a peaceful picket line around plaintiff's place of business at Wynne, Arkansas, from June 20, 1955, until the time that injunction was issued herein.

III

Defendants deny each and every other material allegation contained in plaintiff's complaint and in particular deny:

- (a) That the placards and signs carried by defendants were unfair and misleading.
- (b) That defendants engaged in mass congregating and loitering or mass picketing.

(c) That defendants were connected, in any way, with the smashing of the window and the placing of a live snake in plaintiff's plant.

(d) That defendants have followed automobiles of plaintiff's employees, gesturing, yelling and shouting offensive names, personal ridicule and epithets at them.

(e) That defendants used epithets, insults, abusive names and abusive language other than calling plaintiff's "Scabs", which word, defendants believe is a proper English word found in recognized dictionaries.

[fol. 21] (f) That defendants have congregated in front of driveway and in the streets in front of plaintiff's plant so as to make it difficult for plaintiff's employees to have free ingress and egress into said plant.

(g) That they have annoyed plaintiff's officers and employees by telephone calls.

(h) That they have unlawfully assembled at or near plaintiff's plant.

(i) That they have engaged in any breach of the peace or other disorders.

(j) That the said defendants were engaged in a strike for an unlawful or illegal purpose.

(k) All other matters set forth in said complaint unless specifically admitted herein.

IV.

Defendants deny that plaintiff has suffered any irreparable injury or damage.

Wherefore, defendants pray that the temporary injunction issued herein be dissolved. That costs herein be taxed against plaintiff and that plaintiff take nothing by reason of his complaint herein.

Respectfully submitted, McMath, Leatherman & Woods, Attorneys. By: Henry Woods

[File endorsement omitted.]

[fol. 22] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

No. 3262-A

RAINFAIR, INC., Plaintiff

v.

JAMES E. YOUNGDAHL, ET AL., Defendants

DECREE—Sept. 15, 1955

On this day, same being the 15th day of September, 1955, the cause having been heretofore submitted to the court by agreement of counsel upon the complaint of the plaintiff, the motion of the defendants to dissolve the temporary restraining order, the amendment to the plaintiff's complaint, the answer of the defendants, the citation for contempt ordered by the court, the testimony of James E. Youngdahl, Jerome Bell Becker and Woodrow Chandler taken by the defendants before the court on July 1, 1955, and the testimony of Charlie Ford, Jewel Newby, Dollie Jones, Nadine Johnson, Ruby Reynolds, Carlos Jones, Lorene Jones, Ella Jane Clark, Mrs. Annie Brown, Jearline Baker, Dorothy Davis, Jack Cobb, Bo Hamrick, Elmer Brown; and Pete Bonady taken on behalf of the plaintiff on the above date, and the testimony of Thomas Cobb, Jerry Hamrick, Mildred Tacker, Lee Hamrick and Jack Cobb, taken before the court on July 27, 1955, with reference to the citation for contempt for violating the terms of the temporary injunction, and all stipulations of counsel and orders of the court rendered in this cause, from which the court finds as follows:

1. That the parties have agreed that the cause is submitted on July 27, 1955, for final decree, upon all of the pleadings, the testimony, stipulations and orders made in this cause, and the plaintiff appeared by its attorneys, Shaver & Shaver, and the defendants appeared by their attorneys, McMath, Leatherman & Woods.

[fol. 23] 2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to

cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, and that said defendants should be permanently enjoined from picketing the plaintiff's plant.

3. That the citation for contempt for violation of the temporary injunction issued in this cause should be dismissed, and the defendants should be directed to pay all the court costs in this case.

It is, therefore, considered and decreed by this court that the defendants James E. Youngdahl, W. Chandler, Ruth Grant, Norma Cobb, Hazel Kennedy, Pauline Madgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrip, and each of them, and their agents and employees, and each and every one of the officers and members of Amalgamated Clothing Workers of America, CIO, and all other persons in sympathy, or acting in concert with them, be, and they are hereby permanently enjoined while on, adjacent to, or near plaintiff's premises located on Martin Drive and Rowena Street, in Wynne, Arkansas, from interfering with plaintiff's business, its customers and employees, and from picketing or patrolling, or causing to be picketed or patrolled the plaintiff's premises, and the sidewalks, streets, or other property adjacent to plaintiff's premises, with placards or banners designating said place of business as unfair to organized labor, or with placards otherwise so worded as to give said place of business such designation; that the defendants, and each of them, their agents and employees, and the officers and members of the above-mentioned union, and all sympathizers, and all other [fol. 24] persons acting in concert with *with* them, be, and they are hereby restrained and enjoined from accosting and detaining, or causing to be accosted or to be detained on the sidewalks or streets adjacent to or on plaintiff's premises, any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing, or working for plaintiff, or from calling attention to any alleged unfairness of plaintiff, or its place of business, to organized labor; from threatening, intimidating or coercing any of the officers, agents or employees of plaintiff at any place; from loitering and congregating

around and under (the tent and upon the property that is used as the union's headquarters, located directly across Rowena Street in front of plaintiff's premises; and from obstructing, or attempting to obstruct the free use of the streets adjacent to plaintiff's place of business, and the free ingress and egress to and from plaintiff's property.

It is further ordered that the citation for contempt issued against the defendants be, and the same is hereby dismissed, and that the defendants shall pay all costs incurred in this case.

Ford Smith, Chancellor.

OK as to form
Henry Woods

[fol. 25] [File endorsement omitted]

[fol. 26] IN THE CHANCERY COURT OF CROSS
COUNTY, ARKANSAS

No. 3262A

RAINFAIR, INC., Plaintiff,

vs.

JAMES E. YOUNGDAHL, W. CHANDLER, ET AL., Defendants

**Transcript of Testimony Taken Before the Court—July 1,
1955**

APPEARANCES:

Messrs. Shaver & Shaver, Wynne, Arkansas, Attorneys for Plaintiff, by Hon. J. L. Shaver, Sr.

Messrs. McMath, Leatherman & Woods, Pyramid Life Building, Little Rock, Arkansas, and Hon. Philip Lampert, care of Hon. Henry Woods, Pyramid Life Building, Little Rock, Arkansas, Attorneys for the Defendants, by Hon. Henry Woods and Hon. Philip Lampert.

Be it remembered that the following proceedings were had in the above styled and numbered cause, on its merits, before Hon. Ford Smith, Judge of the above styled Court, in the Court Room, in the County Court House, in the City of

Wynne, Cross County, Arkansas, on Friday, July 1st, 1955, beginning at the hour of 9:30 o'clock, a. m.

There were present at said time and place, the Hon. J. L. Shaver, Sr., Attorney for the Plaintiff; the defendant, James E. Youngdahl, W. Chandler, accompanied by their attorneys of record, the Hon. Henry Woods and the Hon. [fol. 27] Philip Lampert, and the witnesses hereinafter named when testifying.

Thereupon, the following proceedings were had, to-wit:

COLLOQUY BETWEEN COURT AND COUNSEL

The Court: Are you ready to proceed, Mr. Woods?

Mr. Shaver: Your Honor, Mr. Henry Woods called me on the phone the other day and stated that he had talked with you and that there had been—it was agreeable with the plaintiff they would file a motion either to modify or vacate the temporary restraining order. I received a copy yesterday of a motion to vacate the temporary restraining order and this morning I received an amendment to the motion to vacate the temporary restraining order and I am asking leave now to file, I don't think it is necessary, but I am asking leave now to file, so there won't be any question about the plaintiff's position, a motion on June 30, 1955, in other words, file a motion to vacate the temporary order in this cause and the Court agreed to hear said motion on Saturday at 9:30 a. m., on July 1st, 1955.

The Court: That is July 1st.

Mr. Shaver: July 1st, 1955. The plaintiff states the entire matter can be heard at this time, and asks that the temporary injunction be made permanent. As I understand [fol. 28] the law, I see no reason to have all of this testimony here today on the temporary order to vacate when the statute itself says both sides are entitled to a speedy trial. I don't know whether there is any objection to it or not.

The Court: What do you have to say to that, Mr. Woods?

Mr. Woods: Well, Your Honor, we didn't come over here with the idea today of a hearing on a permanent injunction. We hold with the idea of hearing this motion which we filed on the temporary order which I think we are entitled to a hearing on that and I did have the idea and I spoke to you and to Mr. Shaver too that we might agree over here today

on a time for holding a hearing on the permanent injunction. Of course, I think, Mr. Shaver, we could use a lot of this testimony. I mean there wouldn't be any necessity. I think you and I could agree that whatever testimony was adduced today could be used in that hearing.

Mr. Shaver: Well, now, do I understand the Defendants' position that they are not prepared at this time to go into the permanent end of it?

Mr. Woods: Well, this is the first time I have heard of it, heard about that.

The Court: Mr. Woods, your motion is not to modify but [fol. 29] to vacate?

Mr. Woods: Yes, sir, of course, in your original order, Your Honor, this is a temporary injunction and the defendants and each of them may show cause upon reasonable notice to plaintiff's attorney why this temporary restraining order should be modified or dissolved.

The Court: Yes, sir.

Mr. Woods: And I assume that is the purpose of this hearing today on that particular paragraph of your order.

Mr. Shaver: Well, Mr. Woods, you—under the circumstances you say you are not prepared to go into the permanent end of it?

Mr. Woods: Well, I don't think we have had very much notice on that, Bex.

Mr. Shaver: All right. I am just asking you one way or the other, are you or are you not?

Mr. Woods: Well, we are not prepared this morning to go into that.

The Court: All right. We will hear it on this motion to vacate this morning.

Mr. Shaver: All right. Now, Your Honor, may we agree that—that the testimony taken here, in order to save time [fol. 30] and trouble, any testimony taken here today could be used without any permanent hearing? Can we agree to that, Mr. Woods?

Mr. Woods: Yes, I think we would be happy to agree to that. I think it would be introduceable anyway. We might want to introduce further testimony.

The Court: All right. Any proof or any part of it can be made a part of the record as a rule.

Mr. Shaver: Sir?

The Court: Any proof on the hearing to vacate or modify would be a part of the proof on the whole case.

Mr. Shaver: Yes, sir, and I wanted it understood so we wouldn't have to bring all these witnesses back here on a motion for a permanent injunction at a later date.

The Court: Yes, sir. All right. You all have some witnesses?

Mr. Woods: Yes, sir, we——

The Court: Call your witnesses. Do you want to invoke the rule?

Mr. Woods: Do you want the rule?

Mr. Shaver: I don't care about the rule.

Mr. Woods: We don't care for the rule, Your Honor.

The Court: All right. There will be no point to calling the witnesses except as you want them then. You may proceed, Mr. Woods, on the motion.

[fol. 31] Thereupon,

JAMES E. YOUNGDAHL, only one of the defendants herein, called as a witness in his own behalf, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct-examination

By Mr. Woods:

Q. State your name and address.

A. James E. Youngdahl, 1627 Locust, St. Louis 3, Missouri.

Q. By whom are you employed, Mr. Youngdahl?

A. Amalgamated Clothing Workers of America, C.I.O.

Q. What is your position with the Amalgamated Clothing Workers?

A. I am Assistant Regional Director in charge of organization.

Q. Mr. Youngdahl, just by way of identifying you, aren't you the nephew of Judge Youngdahl, former Governor Youngdahl of Minnesota?

A. I am.

Q. Mr. Youngdahl, is this strike at the Rainfair Company under your general supervision?

A. It is.

Q. Are you responsible for it?

A. I am.

Q. What area is under your general supervision?

A. Well, the State of Arkansas along with the State of [fol. 32] Missouri, Louisiana, Oklahoma, Kansas and Southern Illinois.

Q. Now, Mr. Youngdahl, this temporary restraining order refers to a picket line established on June 20, 1955, and continued up until the time that the picketing was restrained and I will ask you if you visited Wynne, Arkansas, and the scene of a strike anytime during this pertinent period?

A. I did.

Q. When did you visit the Rainfair area?

A. On the second day of the resumption of the picketing. I believe that would be June 21st.

Q. June 21st?

A. Yes.

Q. About how long did you spend in the area?

A. Oh, two or three hours.

Q. Several hours. Now, what did you observe with reference to how the picket line was being conducted, that is, how many pickets were on the line at that time on the picket line at the time you were there?

A. I observed the picketing being conducted consistent with our instructions. There were—there was, during the time I was there, one picket at the front side of the factory patrolling back and forth on the road.

Q. Now, that is the road in front of the plant?

A. That is right.

Q. There's one picket on that road?

[fol. 33] A. That is correct.

Q. Walking back and forth?

A. That is correct, moving back and forth slowly at all times in front of that road. I believe at the time that I was there, that was the only—that was the only picket I know of, that is, our instruction—were to have an additional picket on the—on another side of the plant on the side of the plant so to speak, not on Rowena Street. I don't believe that picket was on duty at that particular time.

Q. Was the picket carrying a sign?

A. Yes, sir.

Q. Is this the sign right here? Can you see that sign?

A. It was either that exact sign or one that had exactly that same lettering on it. I believe it was exactly that sign.

Mr. Woods: Will you agree that that is the same sign he referred to?

Mr. Shaver: I believe it is.

By Mr. Woods:

Q. Now, about how far does the plant set back from the road, would you say, Mr. Youngdahl?

A. I would estimate that that plant building is sixty or seventy feet from the road. That is just a rough guess.

Q. That is the actual entrance, I mean the front door of the plant building now?

A. That is correct. Maybe 50 or 60 feet, something of that sort.

[fol. 34] Q. Now, do the pickets maintain a tent there across from the plant property?

A. Yes, sir, to have a place for the relief of the pickets and for maintaining their food arrangements, lunch and so on we have a tent.

Q. Now, would you describe the location of the tent?

A. Yes, the tent is on a lot which is on the other side of the road from the factory and set back from that side of the road maybe 30 or 40—30 feet. It's standing there.

Q. Is the tent on private property?

A. Yes, sir, it is on property that we have rented.

Q. You have leased or rented that property?

A. Yes, sir, that is right.

Q. For a period of time. How many people are—were around or in the tent or in the area of the tent during the time that you were out there?

A. At the time I was there, there were about six or seven strikers and about three members of our staff. I might add that this was a special occasion. We were doing some work in connection with the case we had and they were—knew that I was going to arrive at that time and were waiting for me there.

Q. Now, in the petition, there is an allegation that the

defendants here have continued to follow after the workers, automobiles of plaintiff's employees gesturing, yelling, [fol. 35] shouting offensive names, ridicule and epithets at them. Has that been done to your knowledge?

A. No, sir. I was there on the—on the day that I was there, I was there when there was egress from the plant and there was no—no following to my knowledge at that time or at any other.

Q. Have you given any instructions to the strikers that they are to follow the present employees of the plant or the officials of the plant?

A. No, sir, as a matter of fact, following has been specifically mentioned as one of the several items that we specifically instruct, that I specifically instructed the strikers not to—not to take part in.

Q. Now, Mr. Youngdahl, how many cars, at the time you were there, how many cars belonging to strikers were parked along that road?

A. How many cars belonging to strikers?

Q. Yes, if you know.

A. As near as I can recall, there were about three.

Q. Now, on which side of the road were they parked?

A. They were parked on the side of our headquarters, the opposite side.

Q. Your proper side of the road?

A. That is right.

Q. Did those cars in any way interfere with ingress and egress?

[fol. 36] A. No, sir.

Q. To the plant property?

A. They did not.

Q. Now, the petition here has referred to certain yelling, shouting and gesticulating at plaintiff's employees and the use of abusive epithets, names and so forth. Now, will you tell the Court what you observed with reference to those allegations?

A. Yes, there were—I observed some loud exchanges of words between the strikers and the non-strikers. There was a good deal of singing for, as a matter of fact, the singing was—was promoted by our staff members of our traditional labor songs. I heard no indecent language. I heard no threats. We had specifically instructed them not to

threaten anybody any bodily harm whatsoever and they would not use—they did not use certainly in my presence any indecent language.

Q. Was the word "scab" used?

A. Yes, it was.

Q. Mr. Youngdahl, you have been in the labor movement for sometime. Is the word "scab" an accepted part of American slang language?

A. It is a very common word where this kind of situation exists about people walking through the picket line.

Q. To your knowledge, isn't it used in about every dispute that you have ever had any connection with?

[fol. 37] A. It certainly is. It certainly is.

Q. Now, with reference to the parking of the automobiles around there, where are the employees' of the plant's automobiles generally parked?

A. They generally park right next to the building or on the company parking lot.

Q. On the company parking lot?

A. I would say I have never seen them park any place else.

Q. They never park in the street out there?

A. Never that I have seen.

Q. I see. The company maintains a parking lot?

A. That is correct.

Q. Where is the parking lot located exactly?

A. Well, the parking lot surrounds the plant on three sides immediately adjacent to the plant and on the company—what I imagine is company property.

Q. Now, is it possible for—from your observation, is it possible for the employees to drive right out of the parking lot on to the road at any point, in other words, is there any specific entrance or causeway or bridge or anything over a ditch that they have to all come through or can they come right off of that property on to the road at numerous points on the road?

A. They can and do. I have seen them come off at all points along the—along the entire width and breadth of the [fol. 38] building and running along two full sides of the parking lot, anywhere from there on to the road. There is, I understand, a small causeway that Mr. Bonady uses,

but I don't—the rest of the employees all use, I have seen them use, anywhere along the parking lot.

Q. Now, Mr. Youngdahl, I will show you a copy of a notice that is entitled "Notice" and ask you if you wrote that notice, if that is in your printing and handwriting.

A. Yes, it is.

Q. Is that your signature?

A. That is.

Q. Where was this notice posted?

A. This notice was posted on a—I believe there was a fence post right—right in our headquarters area.

Q. I see. I wonder if you would read that notice for the benefit of the Court.

A. Mr. Woods, we had a bulletin area where notices were posted, and I posted this notice on the occasion when I was at the picket line. It says: "Notice, the Union officially and unofficially requests that no striker at any time perform any violence or any other illegal act, cause any violence or other illegal act against any non-striker or company official. We would appreciate your cooperation." Signed: "James Youngdahl, ACWA, CIO."

Q. When was that notice posted, Mr. Youngdahl?

[fol. 39] On the day that I was at the picket line on Tuesday, the 21st.

Q. Now, Mr. Youngdahl, you are familiar with the term "mass picketing" as is used in reference to labor disputes?

A. Yes, I am.

Q. Would you say that there has been any mass picketing of the Rainfair Company?

A. Never at any time.

Mr. Woods: I believe that is all at this time.

Cross-examination.

By Mr. Shaver:

Q. Mr. Youngdahl, I believe you said your home is in St. Louis, Missouri?

A. That is correct.

Q. Do you have a headquarters at Forrester City?

A. No.

Q. And where do you stay when you are in this country?

A. In Forrest City generally. I stayed in Little Rock last night and——

Q. Well, I mean don't——

A. It varies from time to time. It depends on how long I am here. When I was here for several days in a row, I generally stayed at Forrest City.

Q. Do you know Ruth Grant?

A. No, sir.

Q. Well, who was the young lady down there that was [fol. 40] on the picket line as one of the staff, Ruth what? What is her name that was doing the singing that you were talking about?

A. We have two representatives named Ruth who have been on the picket line from time-to-time during the strike.

Q. All right. Who was this? What Ruth was this?

A. Ruth Ralph and Ruth Kinsey.

Q. Were both of them down there?

A. At different times during the picketing, yes.

Q. Now, which one was there that Tuesday evening when you were there?

A. Both of them.

Q. And their name is what?

A. Ruth Kinsey.

Q. K-I-N-C-Y?

A. Right, and Ruth Ralph. They are both National representatives of our Union.

Q. And where does Ruth Kinsey live?

A. Where is her home?

Q. Yes.

A. Well, she her native home is Dexter, Missouri. She, of course, makes her home around here. She is assigned to this situation.

Q. Where does she live around here?

A. Forrest City.

Q. Now, is she the one that leads the singing?

A. She has. Both Ruths have participated and led in the singing. I wouldn't——

[fol. 41] Q. The one that gets out on——

A. In my time, in my time when I have been there, I don't know of anyone that has been—I don't know whether Ruth Kinsey has been particularly prominent as opposed to Ruth Ralph in the singing.

Q. As opposed to Ralph?

A. Uh-huh.

Q. Have they both got good voices?

A. Yes, they both have got pretty good voices.

Q. And where does Ruth Ralph live?

A. During the time that she is assigned to this situation?

Q. Yes.

A. In Forrest City. Her home is in Blytheville, Arkansas.

Q. Now, I believe you stated that the only time you were out there was on June 21st?

A. During the time of resumption of picketing from June 20th through that week.

Q. That is the only time you were there?

A. That is correct.

Q. Did you order this strike?

A. Did I order this strike?

Q. Yes.

A. Well, order, I don't know how that fits into the way we operate. I am responsible for the fact what the strike was called. We held a meeting in our normal course and [fol. 42] decided at the meeting to resume picketing.

Q. Now, where did you hold the meeting?

A. I wasn't at the meeting. It was held by my assistant. I can't tell you exactly where it was. It was the Friday, I believe the Friday before the picketing was resumed.

Q. Was it held in Arkansas?

A. Oh, yes.

Q. Was it held at Wynne?

A. Or in the vicinity of Wynne.

And what house was it held at?

don't know.

Q. You don't know anything about that?

A. I know something about it. I don't know what house it was held at. It was held on my instructions.

Q. It was held under your instructions?

A. That is right.

Q. You wasn't there?

A. No, sir.

Q. Who did you send there representing your Union?

A. Mr. Jerome Barker.

Q. Is he here today?

A. Yes, he is in addition to our National Representatives who have been regularly on the scene.

Q. Sir?

[fol. 43] A. In addition to our National Representatives who are regularly on the scene, Mr. Becker was sent specifically to conduct the meeting.

Q. He was. Now, what official position does Mr. Becker have?

A. He is the Assistant Director of Organization for this region.

Q. And you are the Director?

A. That is right.

Q. And where does Mr. Becker live?

A. Where does he live?

Q. Yes.

A. In Little Rock.

Q. Little Rock. Let me ask—get this. You didn't attend that meeting or any other meeting?

A. Nor any other meeting?

Q. Which set up this last strike? Am I correct on that now?

A. I attended—well, we—there was just one meeting that set up the strike and that was the one that was held on my instructions on Friday before the strike started, and I wasn't at that meeting.

Q. Mr. Youngdahl, is there any other plant in Cross County that your Union is picketing?

A. No, sir.

Q. Now, you testified that you rented a lot directly in front of the Rainfair?

A. Pardon me. I misunderstood you.

[fol. 44] Q. You rented a lot right directly in front of the Rainfair plant?

A. Right across the road, yes, sir, that is correct.

Q. Now, why did you rent that lot?

A. For a strike headquarters.

Q. To do what with?

A. To do a number of things, *the* prepare and serve the picket line meals, to provide for a place for a telephone where my representatives can be reached and can reach people, to issue instructions and suggestions to the strikers, to hold meetings when the occasion demanded, to make

whatever arrangements were necessary for strike relief programs or any other normal strike business that comes in the course of picketing activities. That is our customary practice.

Q. Now, what kind of a meeting did the Union anticipate holding down there?

A. Well, I held one, for example, *where* I was there, an informal sort where I reported to the people who were strikers and the staff who were gathered there developments that I knew about on the situation.

Q. Did you install a telephone down there?

A. Yes, sir.

Q. What was the purpose of the telephone?

A. That representatives, if necessary, could reach me and could reach an attorney, could conduct the business of the strike that was necessary by telephone.

[fol. 45] Q. In other words, that was your strike headquarters down there?

A. That is correct, it was.

Q. Then why did you put it right across from the Rainfair, right directly across from it to exert pressure on Rainfair?

A. No.

Q. You didn't do that, huh?

A. We didn't exert pressure on Rainfair.

Q. Yes.

A. Certainly the purpose of the strike was to exert pressure on Rainfair.

Q. Well, didn't you put the headquarters there for that purpose too?

A. Our standard practice is to put the headquarters as close to the plant as possible to make the change of picket shifts most convenient, to be able to see what's going on in our ability to see in the plant.

Q. Now, you were down there one time. That was that Tuesday?

A. One time during the week of resumption of picketing.

Q. Yes, sir. All right. Now, would you give me the names of the—what I call the top echelon of the Amalgamated workers that were present there? You were there.

A. I don't follow the top echelon. You mean the staff members?

Q. Yes, the staff representatives.

A. Who were there at that time?

Q. Right. You were there.

[fol. 46] A. Right.

Q. Kinsey was there?

A. That is right.

Q. Ralph was there?

A. That is right.

Q. Who else?

A. Mr. Becker came there with me.

Q. Br. Becker was there?

A. Mr. Chandler.

Q. Woodrow Chandler?

A. Woodrow Chandler.

Q. All right. Who else?

A. Well, the top echelon, those are the only representatives of our Union who were there at that time.

Q. All right. At that time, Mr. Youngdahl, the division regional organizer was there, Mr. Becker, the assistant organizer was there, correct?

A. Well, that is not exactly our term for it, but that was the fact.

Q. All right. Now, Kinsey and Ralph, what position do they hold with the Union?

A. Miss Kinsey, Miss Ralph and Mr. Chandler are all National representatives of our Union.

Q. Now, that's five people who were in this headquarters. Now, how many strikers were there?

[fol. 47] A. There were at that time about seven or eight strikers, maybe nine.

Q. Seven or eight or maybe nine?

A. Uh-huh.

Q. Now, how many sympathizers and people in concert with you were there?

A. To the best of my recollection, there weren't any sympathizers or people in concert with us there. I don't honestly remember any. If there were any, there were more than one or two, but I don't even remember that, who were there.

Q. Now, when you drove up in the car, who was with you?

A. Mr. Becker.

Q. Did you hear the cheering when you arrived?

A. Yes, sir.

Q. It was loud and long, wasn't it?

A. They applauded and cheered when I drove up, that is correct, when Mr. Becker and I drove up.

Q. And then they came out in the road and clapped their hands and applauded and cheered loudly. Would you say that was true?

A. No, I wouldn't say that was true. They didn't come out in the road. When we drove up right on the edge of our property, they clapped their hands within the bounds of our property.

Q. Now, you know that that road out there where the gravel is is Rowena Street that runs north and south isn't but twenty feet wide, do 't you?

[fol. 48] A. I don't know exactly how wide altogether. I would say that is a fair guess.

Q. And you know the property line of Rowena Street going east over to the 24th Street isn't but ten feet and part of it is gravel?

A. I am sorry I don't follow there.

Q. Rowena Street out there is about twenty feet wide where the gravel is east of there.

A. East of our headquarters?

Q. Yes, there is another ten foot strip. It's part of the street but not gravel.

A. It is a kind of a ditch.

Q. Ditch?

A. Yes, that is right.

Q. And you all were standing in the patch out there right west of the tree where your tent was on that dip out there.

A. We can- in and parked the car kind of in the dip and got out of the car and walked into the tent area.

Q. Now, did you say part of your picketing was teaching the ladies how to sing?

A. Part of our standard picket activity which we participated in here or led here so to speak was singing Union songs. Yes, that is right.

Q. For instance, would you sing me one? I mean give me the words to one?

[fol. 49] A. I will give you the words. "Oh, you can't scare me, I am sticking to the Union, I am sticking to the Union to the day I die." That is the crux of the song. That

is a very popular one to me. Do you want me to give you a lot of words?

Q. Well, that one you sang to me out there about the Union is going to roll over Shaver, what is the words to that one?

The Court: You will have to be quiet, if you are going to stay in the Court-Room.

The Witness: I didn't sing the Union was going to roll over Shaver.

By Mr. Shaver:

Q. I know, but you were standing there when it was sung.

A. I don't recall that, but one of our standard songs is "We are going to roll." Do you want me to quote the words of the song to you?

Q. Yes.

A. "We are going to roll; we are going to roll, we are going to roll the Union on, we are going to roll the Union on; if the Boss is in the way, we are going to roll it over him, we are going to roll it over him," etc., and fit in any other words that we—seem apropos.

Q. Now, what do you mean if the Boss is in the way that you want to roll over him?

A. We mean if the Boss doesn't recognize our rights to organize and form Unions, we are going to take action such [fol. 50] as a strike to enforce our rights.

Q. Is that what roll means?

A. That is what roll means in this sense, yes, sir. Roll means many things.

Q. But when it is shouted in a group of fifteen or twenty at people going to and from a plant, it isn't that quiet and docile, is it?

A. When it is shouted by fifteen or twenty people?

Q. Yes.

A. I never saw that happen, but as you say it isn't so quiet and docile as one would just sing it.

Q. Yes.

A. That is quite—that is quite true. The singing of fifteen or twenty people would be quite loud.

Q. Did you hear a song out there sung being a parody on the Davy Crockett song?

A. Yes, I did. Not during the period. I heard it during the previous picketing.

Q. And as the workers were going to and from, "The workers were born in a cotton patch and the greenest girls they ever say"?

A. I heard that during the previous picketing. I didn't hear that out there during this resumption of picketing.

Q. What was your purpose of your picketing out there, that is, who were you exerting pressure on?

[fol. 51] A. The Rainfair Company.

Q. Were you exerting pressure on the workers?

A. We were. The picketing was certainly designed to exert pressure on the workers who decreased the pressure that we were putting on the Rainfair Company which means the workers who were crossing the picket line working during the strike.

Q. In other words, you put pressure on the workers out there?

A. We are putting pressure on the Company and the people who were assisting the company get the kind of production which a strike is designed to stop, that is correct, which would include the ones who were crossing through our picket line.

Q. Even though under our State law they individually had the right to contract with the company if they saw fit, you didn't want them to work and you wanted to put pressure on them, is that right?

A. We were not denying them any rights under our laws of the State of Arkansas or any place else. We were—the purpose of the picketing is to put moral pressure by expressing through our rights of free speech through picketing. We—No question about it, we attempted in this instance and always attempt through picketing to point out the immorality of crossing through a picket line. That is what we did through that picketing. That is what we always do. That kind of pressure was the kind of pressure which we intended to put on the people who were crossing through the picket line at Rainfair.

[fol. 52] Q. Now, you used the word immorality.

A. That is correct.

Q. Or immoral?

A. That is correct.

Q. Now, in doing that hollering, jeering and making fun of the workers that go in, is that a moral pressure as you look at it?

A. In the context of moral in hollering, jeering?

Q. Yes, hollering "You pony-tail scabs and you are pregnant and you had better take the hot water in there with you, and you are a fat scab," and just making fun of all the workers that go in and out of the plant, is that a moral pressure that you call it?

A. In the context I would say that is part of moral pressure as translated into peoples' very excited feeling about a situation like this. People are concerned. People are crossing through a picket line taking away their jobs.

Q. I thought you would say it was animal exuberance. Have you ever heard of that word?

A. Yes, sir, I have.

Q. Now, did you all eat and cook out there?

A. Yes, sir.

Q. Did anybody stay out there at night?

A. No, sir.

Q. Nobody stayed there at night?

[fol. 53] A. No, sir, we closed the picket. My instructions were to close the picket line and they did on the day that I was there and shortly after the noon strikers had left the plant.

Q. Have you ever advocated violence in order to gain your point down there?

A. No, sir, I have not.

Q. Are you sure?

A. I am positive.

Q. I want to—were you present down at Hazel Kennedy's house on the first picket line when she called?

Mr. Woods: I want to object to that, Your Honor. When the first—

Mr. Shaver: When she called—

Mr. Woods: I don't believe the first picket line is in issue here.

Mr. Shaver: Well, the question is whether the pressure was exerted. I don't think it could change in two weeks.

The Court: Objection overruled. Go ahead, Mr. Shaver.

By Mr. Shaver:

Q. Were you down there when she called my brother over the phone one night and told him certain things that was going to happen?

A. I was—your brother is a Ford dealer or works in a Ford Agency?

[fol. 54] Q. Yes, sir.

A. I was present one night before, it was shortly after we began the organizing campaign, but sometime before the first strike started when Mrs. Kennedy—

Q. I mean at Hazel Kennedy's house.

A. At Hazel Kennedy's house or Mrs. Kennedy's, I believe, my impression was your brother called her. I am not sure which it was, but Mrs. Kennedy talked to a person, I believe. Is your brother D. G. Shaver?

Q. Yes, sir, you were there, were you?

A. Yes, sir, I was there during that conversation referred to. It was in the afternoon about six o'clock in the evening.

Q. Now, you have introduced or read into evidence a notice that you put up you say out on a post out there on the lot you leased?

A. That is correct.

Q. And I believe it says, "The Union officially and unofficially requests that no striker at any time perform any violence or other illegal act against any non-striker or company official. We would appreciate your cooperation."

A. Or Company official I believe it is.

Q. Or Company official?

A. Yes.

Q. "We would appreciate your cooperation." Why did you find it necessary to put that up?

[fol. 55] A. Well, I have been in many, many strikes and I know that feelings run high. They run high on the part of all people involved. I have been on many strikes and I know that feelings run high and I know that there are times there is a tendency to violence and I want to establish first and for all officially and unofficially, that it was definitely not the Union's policy. We were asking them not to do it. We did not care to have anything but peaceful picketing.

Q. And you thought it was so imminent that it was necessary that you should put a sign up like this telling your strikers not to participate in violence?

A. As I just said, I know that in all strikes the feelings run high, and this is no exception.

Q. Now, in other words, it was so imminent down there that you thought it was necessary to put this up, didn't you?

A. In standard—it is my standard procedure to put up a sign like that or issue instructions of some sort to strikers. I did that here.

Q. Now, you didn't answer my question.

A. I don't believe any violence was imminent. I didn't believe that violence was imminent.

Q. Well, why did you put up that sign, just because it was standard?

A. That is correct because I recognized that feelings were running high as they are in all strike situations.

Q. Now, when did you put the notice up?

A. I put it up the Tuesday I was there.

[fol. 56] Q. Now, you said I believe that was—strike that. I believe that was two days after the strike had started?

A. It was the second day.

Q. The second day.

A. Of resumption of picketing.

Q. Now, you said when you were there that peaceful picketing, that there was just peace and quietude?

A. I said it was peaceful picketing. I don't know exactly what the situation was, as I recall.

Q. All right. Now, Rowena Street runs north and south, correct?

A. Yes, sir.

Q. The plant, entrance of the plant is Rowena Street?

A. That is correct.

Q. The door to the plant faces east?

A. That is correct.

Q. The plant sits back far enough from Rowena Street so that automobiles of workers there in the plant may drive off the highway and face their car directly facing the building which would leave the cars parked east and west.

A. The ones that are parked on the front of the building.

Q. Yes, on Rowena Street.

A. That is correct.

Q. Is that right?

A. Yes, sir.

Q. Now, when those workers leave in their car and go for dinner and come in at night and leave, they have to [fol. 57] back their car out in that 20 foot street, don't they?

A. No, sir, they don't.

Q. They don't have to do that? How do they get to the street?

A. Because there is an additional drive or to my memory it is certain, is that they can back. They can back around within the confines of the Company parking area. In addition to the distance of the length of a car, there—an additional distance I would say at least the length of another car before you get to the road.

Q. Well, if there was and they parked double, how would the one back of there get into the street? They would have to back into it, wouldn't they?

A. If they were parked double?

Q. Yes, I mean one right back of the other one.

A. Yes, I don't—remember seeing more than a very few parking double and I would not doubt that the two or three that I have ever seen parked double and this is not during this last period. I mean I don't remember specifically from that itself, but generally being down there, it may be that cars that were parked double would have to go onto part of the street or at least into the gulley, although I don't recall exactly the distance in there.

Q. I see.

A. I mean I don't remember if they have to back all the way out in the street or back around in the gulley or [fol. 58] on the plane exactly.

Q. Then there is a road called Martin Drive on the south that runs east and west, is that correct?

A. I didn't know that was the name of it, but there is a road there. I assume that—

Q. There is a road there?

A. Yes, sir.

Q. Now, when you were there the one time as the workers went out of the plant and started home, did you see the entire picket line, over there on the property move forward

to the property line, to the street property line and start to yelling "Scabs, slaves", in such a manner there that you could tell that it was used for the purpose of exciting the workers as they came out? Did you hear that?

A. As I understand, there's several parts to that question. Now, at the time that I have been there in during this past—I mean the one time that I was there during this past week of picketing, I mean the previous picketing, I definitely recall times when the strikers did come to the edge of the road of our property, come to the edge of property and watch the non-strikers as they came out from work, and I do also remember times when they called them scabs. I don't remember hearing the word "slave" used. I don't know if they used it or not.

Q. Now, will you answer my question? You still have—
[fol. 59] Well, your question was to incite them.

Q. No, you still didn't answer my question.

A. Well, it was pretty long.

Q. I said just to make it short.

A. All right.

Q. I said when the workers started out that evening, these twelve or fifteen people that were standing there, didn't they move out to the property edge and start to insulting and jeering and hollering at these workers, and wasn't you the main one that was standing in the middle there?

A. Well, that is a different question.

Q. Yes.

A. I—as I said before, I saw the strikers walk to the edge of the road. At the times I was in the group of strikers that walked to the edge of the road on our property, when the people were leaving the plant, I saw that happen and during the time that that was happening I heard strikers call the people who were working in the plant scabs. Now, that—that is jeering at them and they were jeering at them in that sense. That is correct.

Q. Well, was there—the atmosphere there, did the fact that you called a man a scab that is working in a place, do you think that is kind of like calling them a Christian?

A. No, I would say it isn't.

Q. Is that the way you understand it?

[fol. 60] A. Not at all.

Q. A while ago you said that was a very common term.

A. Not like calling them a Christian.

Q. Hugh?

A. Not quite like that.

Q. What do you understand the word "scab" to mean?

A. I understand the word to mean broadly applied as a person who crosses the picket line, a person who takes another's job while he is on strike.

Q. Now, when they hollered at them, was that quiet or peaceful picketing there?

A. Well, for anybody to yell, it isn't quiet and for people to call to people coming out of the plant scabs in a loud voice is not quiet. It is peaceful—peaceful.

Q. It is peaceful?

A. Yes, sir.

Q. In other words, when you insult a person, 15 or 20 people getting in cars and hollering at one that's working and insult them; that is peaceable? Is that your idea of peaceable?

A. It is peaceable because our instructions were there were to be nothings that were not peaceful. That is correct.

Q. Now, wait a minute. Your instructions were?

A. That is correct.

Q. Well, now can you go out on a picket line and create a tense atmosphere that tends towards a breach of the peace [fol. 61] and say that you were instructed to be peaceful when you violated the instructions?

A. Yes.

Mr. Woods: Your Honor, I object to the way that question is phrased. A breach of the peace is a legal term and a conclusion.

Mr. Shaver: I withdraw it.

The Court: All right. The question is withdrawn.

By Mr. Shaver:

Q. Now, I want to ask you one more question. How many placards and signs did you have stuck on the tent?

A. During that day that I was there on the resumption of picketing, there was a—

Q. That is picketing, isn't it, when you stick a sign on a tent saying they are unfair to organized labor?

A. Not in the mild sense. Picketing is generally somebody carrying a sign walking back and forth within my concept of it. I am sure we had picket signs hung on our tent. I don't know how many. I wouldn't imagine that it would hold too many. It wasn't a very big tent.

Q. Does that look like the tent?

A. Yes, that is the tent.

Q. Is that some picket signs there? That is the picture I am handing you a picture of the tent. Is that some of the picket signs on the tent there?

[fol. 62] A. Yes, yes, there are—there are three picket signs there.

Q. Did you put them up there?

A. Did I put them up there?

Q. No, did your organization put them up?

A. I certainly assume they did, yes, sir. I did—

Q. Now, when you—

A. That is all.

Q. When you say that the picketing was peaceful, as I understand it, your interpretation is that a picket walks down the road, one or two, and kept moving and that is what you call peaceful picketing?

A. That is correct.

Q. Now, the group assembled over here directly in front of the plant under the tent and doing the things that you have testified about, you say that isn't picketing, is that correct?

A. No, it is strike activity. I said picketing to mean, normally means people walking back and forth with signs in front of the plant. It is part of, I guess you might say, the broad interpretation of picketing activity. I wouldn't say that it was picketing in the strict sense, no.

Q. Is Norma Cobb a member of your Union?

A. Well, no, we have no members of our Union here in Wynne. We have people—

Q. Is Hazel Kennedy a member of your Union?

[fol. 63] A. We have no members of our Union here in Wynne.

Q. Well, what is it?

A. We have people who have signed membership application cards which apply for membership. Membership

does not become effective at any time until a contract is signed with the firm that is involved.

Q. Well, is she a member of the Amalgamated Clothing Workers of America?

A. As I just said, no, we have no members here.

Q. No members here.

A. Now, in a strict sense, we have—both of those ladies have been active with the organization and I consider them—

Q. Is Hazel Kennedy active?

A. Yes.

Q. Pauline Levine?

A. Yes, sir.

Q. Maurice Morrison?

A. Yes, sir.

Q. Gladys Nekar?

A. Yes, sir.

Q. Florence Robinson?

A. Yes, sir.

Q. Pauline Ward?

A. Yes, sir.

Q. All right. Now, do you pay them to go out there and picket?

[fol. 64] A. No, sir, we don't.

Q. How many of them do you pay?

A. We don't pay anyone except our National representatives.

Mr. Shaver: I believe that is all.

Redirect-examination.

By Mr. Woods:

Q. Mr. Youngdahl, you were asked about the purpose of the strike. What is the purpose of this strike? What is the objective?

A. The purpose of the—

Q. The strike.

A. The picketing since—

Q. Yes, sir, the picketing since the 20th, the purpose of the picketing.

A. The purpose of the picketing since June 20th is to—

is in protest of the continued unfair labor practices that the company has permitted.

Q. Is it also to secure recognition?

A. As one of the violative things that the company has done in violation of the National Labor Relations Act.

Q. Now, in this picketing you are not in any way seeking or asking to secure a closed shop or a union shop?

A. No, sir, at no time has there been any mention whatsoever of any contract terms, and we never seek a closed or union shop in the State of Arkansas.

Q. And there's no wage demands?

A. No.

[fol. 65] Q. At this point?

A. No.

Q. Involved?

A. There has been no contract terms ever mentioned in this situation.

Q. Now, when you had these people at the meeting on the 21st when you drove out there, I believe you pointed out that was a special occasion and at that time there would have been more people there than ordinarily present, is that right?

A. That is correct. They were waiting for me to come.

Q. I see.

A. And I assume that there were more than usual. I know there were some they said they had come to see what I had to say.

Q. Now, you were asked about this song, Roll the Union On. How long has that song been used in the labor movement or used by them, do you know?

A. Oh, I would say I know it has been used for ten years because I have used it for ten years, but I would say it has been used for twenty or thirty or forty years. It is an old song. In fact, I would say that it goes back to the 1800's, yes.

Q. And it is used in many of these disputes?

A. Yes, sir, I would say almost all of them. It is a standard song.

Q. Now, did you hear anybody mention anything about someone being pregnant or pregnancy?

A. Never at any time.

[fol. 66] Q. Did you ever hear of any language that could be considered obscene?

A. Not by any striker, any staff member of our organization, no, sir, any concert, people acting in concert.

Q. Now, this sign here I believe you said this is standard operating procedure? In other words, in every labor dispute in which you are involved you always either post such a sign or give such instructions verbally whether there has been any indication?

A. Right.

Q. Of violence whatsoever, is that right?

A. That is correct. Our standard practice is to (1) give verbal instructions and (2) either post a notice where there is opportunity to post a notice or give mimeographed instructions but in some form to give written and verbal instructions in all strikes.

Q. Now, at the time that you were out there, did you notice any of the employees of the plant having any difficulty getting their cars into or out of that plant?

A. No, sir, I did not.

Q. In other words, it was an open situation, plenty of room?

A. Yes, two full blocks practically.

Q. Plenty of access?

A. That is right, for them to come out of the parking lot.

Q. Now, Mr. Shaver asked you about this incident of when the strikers came to the edge of the road, and I didn't get it [fol. 67] exactly clear in my mind whether that was during the first picketing or on this occasion on June 21st when you came down there for the meeting.

A. That was during the first picketing. That did not happen on the day that I was down there.

Q. In other words, on the 21st no such incident that you referred to occurred at all?

A. No, sir.

Mr. Shaver: I didn't word my question that way. I thought it was plain.

The Witness: I believe you said at any time, sir. That was my understanding of the question.

Mr. Woods: I believe that is all.

Recross-examination

By Mr. Shaver:

Q. I wanted to get that last cleared up because I meant my question, I was talking about the day that you were down there. That was Tuesday?

A. That is correct. It was the 21st.

Q. Yes, it was the 21st. Now, we are talking about the same thing, Mr. Woods. In other words, at that time, there was five of the staff as you call them?

A. Pardon?

Q. There was five of the staff there at that time?

[fol. 68] A. Yes, including me.

Q. And that was the evening that you estimate there was maybe seven, eight or nine strikers there?

A. Strikers were there, sir. That is right.

Q. Now, that is the evening I am talking about.

A. All right.

Q. When they came out on that board there and hollered those "scabs" and jeering and that now you say it didn't happen?

A. On that evening?

Q. Yes.

A. I said there was no lining up on the road as I stated today and what I understood to be your question.

Q. I said lined up on the edge of the place, on that wooden place where you go over the drive.

A. No, sir, there was no lining up on the road. There was no lining up on the road to my knowledge.

Q. Now, was there any lining up on the road?

A. Was there any line up? There was no kind of lining up.

Q. Were they assembled in a group?

A. Yes, they were assembled in a group. We had a meeting at that time.

Q. Yes, was there any jeering, hollering and hollering "scabs" or not?

A. There is no doubt that calling of the people that were working in the plant scabs took place while the people were standing in the group. There was certainly no organized [fol. 69] group lining up. I wouldn't say that it wasn't a group. There were a total of, as I said, maybe 12, 13 or 14

people there and they were assembled in this area. Now, that in itself was a group.

Q. That is right.

A. But there was certainly no organized group and no lining up. They had been lined up in the previous picketing period and that is what I thought you meant before.

Q. All right. That group there or company was either lined up or in a group and they were hollering, jeering to the workers that came out?

A. A number of the workers were standing together, not all of them but a number of them were standing together as the people came out of the plant, and in the course of that they were calling the people that came out of the plant scabs.

Q. All right. Anybody called you a scab, would you consider that an insult?

A. I would never be a scab.

Q. I say would you consider that an insult?

A. Yes, sir, to me it would be an insult.

Q. All right. Now, why would you call a person a scab to insult them?

A. To me it relates the moral implications of the thing that they were doing. That is correct.

Mr. Shaver: That is all.

Mr. Woods: That is all.

[fol. 70] The Court: Let me ask you, Mr. Youngdahl, how long were you out there?

The Witness: On that particular day?

The Court: Well, on any of those, how long have you been out there while the picket line was operating since the picketing started?

The Witness: Well, sir, I was there on that Tuesday morning about there hours from, I would say, roughly, from 2:30 until 5:30 that afternoon, or from 2:00 to 5:00 that afternoon.

The Court: That was on the 21st?

The Witness: Yes, sir.

The Court: Have you been there since?

The Witness: No, I have not been there since.

The Court: All right. Are you all through with this witness? You may stand down. We will be in recess for ten minutes.

(Witness excused.)

(Thereupon, a ten minute recess was had and thereafter occurred the following proceedings:)

Mr. Shaver: I would like to recall Mr. Youngdahl for just one question.

The Court: All right. Will you take the stand, Mr. Youngdahl?

[fol. 71] Thereupon, JAMES E. YOUNGDDAHL, one of the defendants herein, recalled as a witness in his own behalf, after having previously been first duly sworn by the Clerk, in answer to questions propounded, testified further as follows, to-wit:

Recross-examination

By Mr. Shaver:

Q. Mr. Youngdahl, Henry Woods brought here that you wasn't picketing down there for a closed shop.

A. That is correct.

Q. Is that correct?

A. That is correct.

Q. And then you stated that you had no members of your Union here at Wynne?

A. That is correct.

Q. And you further stated that these defendants that I named here were not members of your Union?

A. That is correct.

Q. Is that correct?

A. I stated that membership of our Union begins when the contract is signed.

Q. When the contract is signed and you have no contract with the management?

A. No, we have none.

Q. You have no organization as far as that plant is concerned?

[fol. 72] A. Well, what we refer to generally, we set up what we call an organizing committee which consists of people who sign the membership application cards that we have, but our consistent Union Policy is that we ask people

to sign membership application cards and the privileges and obligations of membership begins when the contract is signed and the benefits of the Union naturally go in effect.

Q. Now, the signing of the application cards is—you get a—if you have an election out there and they vote to go into the Union, what happens?

A. If we have an election and they vote to go in the Union, we call a meeting and have a bargaining committee elected at an open meeting. The bargaining committee with our Union negotiators goes in and sits down with the Company and negotiates for an agreement, and when the contract agreement is reached it is brought back again to an open meeting of the people and they vote on it, and if they vote for it, it is signed and at that point, the point, the beginning of the contract, membership, people are then eligible for membership in the Union, to become members when they duly authorize them.

Q. All right. Now, you haven't had an election out there, have you?

A. No, sir, we have not.

Q. And you withdrew your request for an election out there?

A. Yes, sir, we did.

[fol. 73] Q. And after withdrawing your request for an election, then you picketed it, that is right?

A. That is correct.

Q. So isn't the sense of your picketing for the purpose of forcing these people that bargain individually to bargain collectively with your group?

A. Not in any sense.

Q. That is not in any sense, and what is the purpose?

A. The purpose of the picketing beginning the 20th?

Q. Yes.

A. Of June?

Q. Yes.

A. The purpose of the picketing beginning the 20th of June, as I stated before and as we stated in a wire sent to the Company was because of the continuing unfair labor practices of the firm. Now, one of the original things which we contend is an unfair labor practice is the refusal of the Company to recognize an offer of proof of majority status, which offer we made to the Company.

Q. But you were not willing to go into an election on that?

A. That is correct because a Company—that is correct. I will give you a reason if you want it.

Q. Yes. All right. Now, what is your other unfair labor practice?

A. Well, according to the complaints that we filed of unfair labor practices against the company, there is a violation [fol. 74] of Section 8 (a) (1), 8 (a) (3), 8 (a) (5), violations of the National Labor Relations Act, refusal to recognize and bargain with the Union. The allegation is that the Company upon seeing and recognizing that we have majority status or informally recognizing it, failed to obey the law in dissipating the majority that we have, and a new violation, the continuing one, and the prime reason for the resumption of picketing is the refusal of the Company to reinstate the strikers who applied for unconditional reinstatement.

Q. Now, those matters you have got filed before the National Labor Relations Board?

A. That is correct.

Q. And you wouldn't wait until they decided that, would you?

A. It might take some time.

Q. So regardless of what they decided and the law provides that, why then the picketing was thrown up, is that right?

A. That is right. We brought the additional pressure on the Company in an effort to—

Q. To make them bargain collectively, didn't you?

A. To hold or make them hold the Company in violation of the Act, that is correct.

Q. Well, the direct purpose of picketing is to make them bargain with your Union?

A. The direct purpose of the picketing was picketing in protest of violations of the law.

[fol. 75] Q. If they recognized your Union, you would picket?

A. Well, we withdraw our picketing if they recognize the Union according to the principal of the law.

Q. Now, under your contention, do you consider that everybody that works there is a scab?

A. As I said before, the broad use of the word "scab"

is applied to anybody that crosses a picket line. The original technical one that reaches back a hundred or so years is the people who replace strikers and cross the picket line and take the place or the jobs of people on strike.

Q. Well, you don't consider that to be the interpretation, do you?

A. The general—as I say, that is the original interpretation. It has come to mean in practice anybody who crosses a picket line.

Q. That is what I am getting at. There is nobody taking anybody's place down there in that plant?

A. I beg your pardon. Yes, there are.

Q. Who?

A. There are some people who have been hired since the strike began to take the place of the strikers.

Q. How many?

A. I don't know.

Q. You don't know, but in the beginning your interpretation of a scab is anybody that crosses a picket line?

A. That has come to be the broad usage and that is my [fol. 76] usage of it in day-to-day practice. That is correct.

Q. And the old interpretation is one who worked at a plant and took somebody else's job?

A. One who took the job of a striker, that is right.

Q. One who took the job of a striker. Now, that last condition doesn't exist here, you say, except in one or two instances?

A. I didn't say how many. I don't know how many.

Mr. Shaver: That is all.

The Court: That is all. Call your next witness.

(Witness excused.)

Thereupon, JEROME BILL BECKER, called as a witness on behalf of the defendants, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Woods:

Q. State your name.

A. Jerome Bill Becker.

Q. What is your address, Mr. Becker?

A. 700 North Cedar, Little Rock.

Q. By whom are you employed?

A. Amalgamated Clothing Workers of America.

Q. What is your exact position with them, Mr. Becker?

A. I am assistant to the Director of Organization, Mr. Youngdahl.

[fol. 77] Q. How long have you been employed by the Amalgamated?

A. About six years.

Q. Where did you go to school, Mr. Becker? Are you a College man?

A. I went to Illinois.

Q. Did you graduate?

A. Yes.

Q. You mean University of Illinois?

A. Uh-huh, at Champaign.

The Court: Take your hand down please, Mr. Becker, so I can hear you.

The Witness: I am sorry. I am sorry.

By Mr. Woods:

Q. Mr. Becker, are you in general charge of this strike, that is, immediate charge of it?

A. Yes, I am.

Q. Now, from and after the 20th of June, were you present at all times up until the times that picketing was enjoined?

A. Not at all times.

Q. Not at all times. What times were you present?

A. I was there Monday when picketing was resumed. I was there Tuesday except to go pick up Mr. Youngdahl and I was there part of Thursday.

Q. Now, would you describe to the Court the physical set-up as far as the pickets are concerned, that is, how many pickets were used and where they walk and so forth; if you [fol. 78] will describe that to the Court.

A. Before seven o'clock, we used two pickets, one on Rowena Street and one on Martin Drive. After seven we used one up until lunch and we went back to two and then when it was—when people were coming out of the plant we also use two.

Q. Do you ever use any more than that?

A. No.

Q. And that is this the sign that the pickets have been carrying since June 20th?

A. Yes, it is.

Q. When the picketing was resumed?

A. Yes, it is.

Q. Now, would you tell the Court whether there has ever been any mass picketing, as you understand the term?

A. There has never been any mass picketing at any time.

Q. Now, would you tell the Court the location of this tent across from the plant?

A. It is about—now it is about 140 feet across from the main plant entrance near a shade tree, near a tree.

Q. Now, is that tent on private property which the Union has leased?

A. That is right.

Q. How many people are generally present there at the tent or around the tent in the vicinity?

[fol. 79] A. Well, the—on Monday when we resumed the picketing I would say throughout the day there were about fifteen people who came down and stayed a while and left. On the average I would say there have been, oh, four to six, four to eight people there.

Q. No, you were present at the meeting that Mr. Youngdahl attended on the 21st, on Tuesday the 21st?

A. Yes, I was.

Q. Now, would you say that that represented the maxi-

mun number of people present at the tent at any one time on that occasion?

A. Yes, I would.

Q. Now, would you describe where the cars belonging to the strikers are parked and tell the Court how many cars are parked there at any one time?

A. Well, on Monday when we resumed picketing the lot on which we were going to put our tent wasn't cleared. It was over-grown with weeds. At that time some cars parked on Martin Drive I would say some 150 yards away. I would say about two or three, a few of them parked in front of the house until enough room was cleared so the cars would drive into our private lot, and they were taken off the street.

Q. Now, Mr. Becker, did you all put a little bridge there to get across that ditch?

A. That is right. There was a bridge built that day.

[fol. 80] Q. And the purpose of that was to get cars out of the Street?

A. That is right. As a matter of fact, we had some boards down very early that morning so we could start building the bridge. The fence had to be torn away so we could make a passageway for the first car to get in with the tent.

Q. In other words, you didn't want any question to arise at all about blocking the street?

A. That is right.

Q. Now, have you ever noticed any of the employees having any difficulty getting to and from the plant property?

A. No, I haven't notices that at all. It is a very wide area. People can drive in from three or four different directions.

Q. Well, now, you say some cars were parked on Martin Drive, that is the drive that comes in from the Highway?

A. That is right.

Q. And in which direction were those cars parked, toward the plant or toward the highway?

A. Well, they were at a 90 degree angle to the highway and at the same to the plant along the side of the road I would say.

Q. How far away from the plant do you say those cars were parked away from the plant?

A. Well, from the main entrance, just a guess, oh, I would say about 75 to 100 yards, possibly 75 yards.

Q. Did those cars in any way interfere with entrance to the plant?

A. No.

[fol. 81] Q. Or exit to the plant?

A. No, they were parked on the side of the road adjacent to our rented property.

Q. Is that a fairly wide road, Martin Drive?

A. I would say that two cars could get by very easily.

Q. How many cars were parked on Rowena Street during this period? Generally speaking, how many cars would you say were parked on Rowena Street?

A. Oh, I would say four or five. I think some of them were parked up at one of the striker's houses and the people walked down to the picket line.

Q. Whose house was that?

A. Mrs. Kennedy.

Q. Mrs. Kennedy?

A. It is about a block from the plant.

Q. Now, when those cars were parked on Rowena, on which side of the street were they parked or were you parked on your property side or the other side of the street?

A. Our property side as close as they could get to that ditch.

Q. And you never noticed any blocking of cars moving out of the plant?

A. None at all.

Q. Now, Mr. Becker, mention is made in the petition that of a window in the plaintiff's plant being smashed and a large snake thrown therein sometime in the early morning of [fol. 82] June 20th, do you know anything about that?

A. No, I don't.

Q. When was the picket line established? What time was the picket line established?

A. We met—I think the first people appeared—we got there about, oh, I would say about 6:15. The workers go in up until 7:00 o'clock and I think we started picketing about, oh, 6:30, 6:35, something like that.

Q. Did any of your people go off of your property over into the plant property or around the plant property or close to the building after you established your picket line on June 20, that morning?

A. No, we had a job to do clearing that lot. Several people were doing that.

Q. No one went around the plant after the picket line was established?

A. Not to my knowledge.

Q. You didn't see any windows broken or hear—did you hear about any windows being broken?

A. No, late that afternoon somebody came down and said there was a rumor around that a window had been broken and that several snakes had been thrown into the factory.

Q. Now, that was late in the afternoon?

A. Late in the afternoon.

Q. Of the day that you first set up your picket line? Have [fol. 83] you ever known of any of the defendants herein or any of the strikers following the employees or officials of the plant in automobiles?

A. No, sir.

Q. Have you ever instructed any of these people to follow others in automobiles?

A. Absolutely not.

Q. No-, there is the further statement that the strikers have continued to yell, shout and gesticulate to plaintiff's employees. Would you tell the Court just what you have seen in that regard as far as this shouting and yelling is concerned? Would you describe what's going on to the Court?

A. The strikers would stand on our property. They would sing. They would yell "scab" as the people were going in and as they were coming out. That was going on from both sides of the line.

Q. In other words, there were some yelling back and forth. Is that what you mean?

A. (No response.)

Q. Did you ever hear any vulgar or obscene language used by the strikers?

A. No.

Q. Or by the officials of Amalgamated Clothing Workers?

A. No, sir, I did not.

Q. Have you ever heard this term "scab" used before in connection with other labor disputes that you were assigned [fol. 84] to?

A. Yes, I have. It is a—just this morning there was a

picture in an Arkansas paper. There was the word "scab" in that picture.

Q. That was in connection with this bus strike over at—

A. Yes.

Q. In fact, have you ever been in a labor dispute in which the word "scab" wasn't used at sometime or another?

A. Always it's been used.

Q. Now, there is a reference in the petition to annoying the officers, agents and employees of the plaintiff with telephone calls. Have you ever participated in such activity?

A. No, sir, I have not.

Q. Has anyone else connected with this strike to your knowledge?

A. Not to my knowledge.

Q. Have you given any instructions that these people are doing things of that nature?

A. Our instructions were that we did not want any violence at any time, anywhere, anyplace.

Q. Now, Mr. Becker, you have been in a number of these labor disputes in this area. Would you say that this strike has been peacefully conducted?

A. Yes, I would. This has been an extremely peaceful strike.

Q. Have you personally instructed these people that they are not to use any violence whatsoever in connection with [fol. 85] this strike?

A. Yes, I have, several times.

Q. Do you know of any violence being used in any way?

A. No, I don't.

Q. As far as the strikers are concerned, are the employees of Amalgamated?

A. No, there has never been any violence.

Q. Now, you heard Mr. Youngdahl testify with reference to a meeting that was held relative to reestablishing the picket line; did I believe, Mr. Youngdahl said that you were in charge of the meeting or present at the meeting?

A. Yes, I was.

Q. What was the purpose of the meeting and what decision was made at the meeting?

A. The purpose of the meeting was to recommend a strike. The decision was to start the strike. The meeting was held Friday morning about 11:00 o'clock in Forrest

City. The strikers had been signing up for their unemployment compensation in Forrest City and it was the time they were all together and it was most convenient for them to be in Forrest City. It was held there.

Q. The strikers themselves voted to reestablish the picketing?

A. That is right.

Q. But that was on the recommendation of the organization?

A. (No response.)

Q. Now, in that meeting did you discuss with them how [fol. 86] the picket line would be set up?

A. Yes, we did.

Q. I see. And did you reiterate your instructions with reference to violence?

A. I did.

Q. Now, as I understand it, just what is the purpose of this strike? I mean the second picketing which is involved herein, what is the purpose of it?

A. The purpose is to inform the public. The purpose of the strike is because of the unfair labor practices that the Company has committed and which we are alleging before the National Labor Relations Board.

Q. And you are seeking to inform the public advertising your side of the cause?

Mr. Shaver: Now, I would like him to answer that.

Mr. Woods: He said, "Yes."

Mr. Shaver: I didn't hear him. He shook his head.

The Witness: Yes, of course, informing the public is one purpose. There are other purposes.

By Mr. Woods:

Q. What is the other—what are the other purposes?

A. The purpose is to ask people, to inform people who might be coming down to look for jobs that there is a labor dispute and that they should not cross the picket line to go to work.

Q. And is it a further purpose to exert pressure as Mr. [fol. 87] Youngdahl stated?

A. Yes.

Q. On the Company?

A. Yes.

Q. And also you would like to persuade the people who are working there not to continue working here, is that right?

A. That is right.

Q. To notice and honor your picket lines?

A. Yes, sir.

Mr. Woods: I believe that is all.

Cross-examination.

By Mr. Shaver:

Q. Mr. Becker, I believe you stated you were down there Monday, Tuesday and Thursday?

A. I was down there all day Monday, all day Tuesday except for a few hours when I went to get Mr. Youngdahl and part of Thursday.

Q. What part?

A. It was Thursday afternoon.

Q. Now, I believe you said that the strikers voted at Forrest City on Friday prior to the picket line that was set up on Monday to strike, is that right?

A. That is correct.

Q. And where was that meeting held?

A. The meeting was held at the place where the staff had [fol. 88] been staying, the D. & M.

Q. What is the D. & M.?

A. It is a motel. They have a motel and an apartment house, I understand.

Q. The D. & M. at Forrest City?

A. Yes, sir.

Q. It is a motel. Now, who was at the meeting?

A. You mean the staff?

Q. The staff and the strikers.

A. Miss Ruth Kinsey was there, Miss Ruth Ralph, Mr. Chandler and I will estimate, oh, about 22, 23 employees.

Q. Now, what do you mean employees?

A. Employees of Rainfair.

Q. Do you mean that they were out, that went out on strike?

A. Yes, sir.

Q. Well, now why did—what was the purpose of the meeting there? I believe—let me say that I believe you said they were down there to get their unemployment benefits, am I right on that?

A. No, it is my understanding they apply for unemployment compensation on Friday between nine and ten o'clock, I believe, and the meeting was called at eleven because the majority of them went down to sign and they were all in a group at that time and the staff here felt that since they were all there together the meeting should be held right there in Forrest City.

[fol. 89] Q. Well, now, don't you know that the unemployment benefits had been denied to them prior to that time and this gentleman here has appealed the case to the Department of Labor?

A. Yes, sir, yes, sir, but they are still signing. They went to sign for unemployment. They couldn't—

* Q. Well, it had already been denied and the appeal perfected in Little Rock.

Mr. Woods: They have to continue to sign every week, Rex.

Mr. Shaver: Huh?

Mr. Woods: They have to continue to sign every week.

Mr. Shaver: Oh, yes.

By Mr. Shaver:

Q. In other words, you sign every week for it. Is that what you are doing?

A. I think it is every week.

Q. Well, now, what would you say—would you say now what you were doing down there? Is that what you were doing down there?

A. No, that is the reason the meeting was held at Forrest City. The purpose of the meeting was to recommend a strike at Rainfair.

Q. You don't mean a strike now, do you? You mean a picket line, don't you?

A. Well, I mean a strike with a picket line or—

[fol. 90] Q. Well, you had already withdrawn your picket line two weeks before that.

A. That is true. It had been officially withdrawn. However—

Q. And notified the Company?

A. That is true, however, when the Company refused to reinstate, because there were further unfair labor practices, we recommended another picket line strike.

Q. All right. Now, for the purpose of this picket line then when you withdrew the other picket line and then the Company you say didn't reemploy the ones that walked out, is that right?

A. Yes, sir.

Q. Then you decided to throw another picket line around the plant?

A. When the Company refused to reinstate the strikers, we recommended that the strikers continue picketing or continue their strike.

Q. So on that Friday then they voted to strike?

A. That is correct.

Q. I mean to picket. Let me get it straight. They voted to set that picket line up?

A. That is correct.

Q. On Monday morning?

A. That is correct.

Q. Now, what did you do to help them between there and Monday morning to set the picket line up?

[fol. 91] A. Well, after the meeting, I guess the meeting was over about one o'clock, I went back to Little Rock and came in again on Sunday night.

Q. And where did you come to?

A. I came to the D. & M. Motel.

Q. Did you come to Wynne?

A. No.

Q. When is the first time you came to Wynne on this?

A. We got there about six fifteen in the morning.

Q. Now, when you first set up your strike, your picket line, on Monday morning, was Youngdahl there?

A. No.

Q. Were you there?

A. Yes, I was.

Q. Was Ralph there?

A. Yes, sir.

Q. This other lady, what is her name?

A. Mrs. Kinney.

Q. Was she there?

A. Yes, sir.

Q. Was Chandler there?

A. Yes, sir.

Q. So everybody was there Monday morning except Mr. Youngdahl?

A. That is right.

Q. From the staff?

[fol.92] A. That is right.

Q. And you stayed there I believe all day?

A. That is right.

Q. And stayed there all day Tuesday?

A. Not all day Tuesday. I went to get Mr. Youngdahl.

Q. Yes, sir, except that time, and did Chandler, is it Kinney?

A. Kinney.

Q. Kinney. Did Chandler and Kinney and Ralph stay there too?

A. Yes, sir.

Q. In other words, there were four of you there Monday and Tuesday, except when you went to get Mr. Youngdahl?

A. That is right.

Q. And Wednesday you left in the afternoon, right?

A. No.

Q. Were you there? Were you there Wednesday?

A. No, I wa-n't.

Q. It was Thursday you were there?

A. It was Thursday.

Q. You left in the afternoon.

A. No, I came from Little Rock and drove to Wynne Thursday afternoon and drove back later that afternoon.

Q. All right. Now, during that time how many of the strikers or the sympathizers or the people in concert with you were assembled in and around that tent there, the average?

A. The average?

[fol. 93] Q. Yes.

A. I would say the average was about—people would

come and go. I would say the average was about from four to eight.

Q. From four to eight. No, you heard Mr. Youngdahl testify besides the four that was there on the staff, the five, one, two, three, that there were seven or eight or maybe nine there that Tuesday?

A. Yes, sir.

Q. Do you agree to that figure?

A. Yes, sir, but when I—my understanding of average is averaging out the number of people who come down all day long. For example, in the morning there might be just two or three. Later on, some people might come and there will be a few more and then in the afternoon it might drop off maybe two, three or four or five or six.

Q. Well, the purpose of the tent being out there was to exert pressure on Rainfair, is that correct?

A. The purpose of the tent, it was a function of the strike—in a strike you have a headquarters where people can come sit in the shade and talk, have lunch, for a defense relief program, a place for pickets to wait until it is their turn to picket.

Q. Now, is that the purpose of a headquarters as you understand it?

A. Well, as far as the—this question of the pressure, the [fol. 94] purpose in having the strike is to exert economic pressure on the Company. Now, if the picket line is a part of the main part of the pressure. Now, if having a tent pitched with people sitting around it is pressure, I—

Q. It is.

A. It is part of the overall strike scene.

Q. It is pressure.

A. I don't know what you mean by it.

Q. All right. That is all.

A. By pressure.

Q. I mean that is all I want to ask you about. Now, you went into much detail about, well, your explanation about that tent, activities down there, reminds me of the Presbyterian people, and we are very cool people, you know, and your explanation of the tent and your headquarters and that is the way you would like to have it conducted and the way you described it a minute ago?

A. That is the way it is conducted.

Q. That is the way it's conducted as you saw it? Now, you are sure of that?

A. Yes, sir.

Q. And you were present down there Tuesday when I was down there, weren't you?

[fol. 95] A. Yes, sir.

Q. And you were present down there when the Chief rode up and they made a touchdown, weren't you, and they cheered and hollered? You were then, weren't you?

A. I drove up.

Q. You drove up?

A. At that time.

Q. And they came out in the road, all of them, and greeted you, didn't they?

A. Yes, sir, that was fine.

Q. And you were there when the Rainfair workers backed out and there was so much noise that one man just held a horn down and blew it all the time trying to get room to get out on the highway? You heard that, didn't you?

A. At that time, I think in the parking lot one non-striker held her horn down for several minutes, and I think some fellow who was picking someone up as he was driving my raced his motor and honked his horn. I don't think there was any problem in passing on the road.

Q. No problem?

A. No, sir.

Q. You know that road there isn't but twenty feet wide, don't you, that Rowena Street there where the gravel is approximately?

A. Yes, I think two cars can pass very easily unless there is one car parked alongside the road and then it makes—the [fol. 96] one car—one car can pass. A truck can pass.

Q. Now, don't you know that your group over there at the headquarters, as the workers would come and go, would congregate and holler "scab" and "pone-tail scab" and "fat scab" and ridiculous dresses on people and talk about women being pregnant and taking in hot water? You stood there and heard all that, didn't you?

A. They were yelling and shouting. I never heard any obscenities.

Q. Well, suppose the worker was pregnant and working

in the plant, would you think it would be an insult if your daughter was working there and she was pregnant and you would holler at her "you had better take the hot water with you, you might get in trouble"? Does labor unions think that is a fine procedure to influence them to join your Union?

A. Well, of course, I wouldn't—well, if I had a daughter who was crossing a picket—

Q. No, a daughter who was working at Rainfair and pregnant.

A. I imagine if something like that was said it would.

Mr. Woods: I object to that. I don't believe he has said—I don't believe he has ever said that he heard such a statement, Mr. Shaver.

Mr. Shaver: I agree with you.

By Mr. Shaver:

Q. Did you ever hear such a statement hollered of that kind down there?

[fol. 97] A. Now, I didn't.

Mr. Shaver: I will withdraw my question.

By Mr. Shaver:

Q. Did the group that was directly, I claim, on the highway and you claim you were just over on your property that you had leased, that is the difference between us. There is probably a hair's breadth between us. That group was assembled there, did you hear them jeer and cheer as they would go and come and holler "scab" and different epithets at the workers?

A. I did.

Q. Did you in your advice to them to be peaceable, is that part of your peaceable attitude?

A. It is extremely difficult in an emotional situation to control what someone is saying and, as you know, it was an emotional situation. They did yell. They did shout. There was inter—there was exchanges on both sides of that.

Q. In other words, in your language, it is extremely difficult to know what people will say?

A. Or control speech. I didn't try to stop yelling or

shouting. However, I repeatedly cautioned people about using obscene language, or threats.

Q. You didn't hear any threats used there?

A. No, sir.

[fol. 98] Q. Did you hear any coercion used there?

A. No, sir.

Q. Any intimidation used there? You didn't hear that?

A. Intimidation?

Q: Yes.

A. No.

Q. You didn't hear nothing like that?

A. No, sir.

Q. And you were there three days?

A. That is right.

Q. Did you hear any insults thrown at the workers?

A. Well, if calling people scab is an insult, those insults were thrown at them.

Q. Well, is that an insult in your language?

A. I would not be called——

Q. Sir?

A. Is it an insult?

Q. Yes; somebody call you——

A. It is an insult to me if somebody crossed a picket line.

Q. I didn't ask you that question. I asked you if calling you a scab was an insult to you and would it incite you?

A. That is a difficult question.

Mr. Woods: I object to that question. I don't believe it is relevant.

The Court: He can answer it yes or no if he terms the [fol. 99] word "scab" an insult. Why I think it is proper.

The Witness: I think—I would say it is an insult for someone to be called scab or be a scab.

By Mr. Shaver:

Q. I asked how do you consider it.

A. If someone—if someone were to call me a scab I would think it rather ridiculous and wouldn't pay too much attention to it because I know where I stand. Is that what you mean?

Q. I just wanted you to answer it. I just wanted you to

answer it. Now, will you define to me the labor term of a "scab," what it means?

A. Well, I was in Little Rock, I looked it up in a large Webster Dictionary last week and my recollection is that a scab is a person who crosses a picket line to go to work. That is my recollection of what the dictionary says.

Q. Well, now, the technical definition that everybody knows generally, did you ever hear the definition of a scab that is working in somebody else's place that struck?

A. I have heard it, but it isn't mine, for example, my personal definition and Webster didn't define it that way I don't believe.

Q. Now, you were asked why this picketing was going on down there. You said in the first place you were trying to inform the public. Did you say that?

A. That is right.

[fol. 100] Q. Then you said you were trying to persuade the workers down there to join the Union.

A. We were trying to persuade—well, we are always trying to persuade workers to join the Union, yes.

Q. Do you agree with that?

A. A picket line has a—two or three purposes.

Q. Now, what kind of persuasion were you trying to do when you were hollering "scab" and jeering and cheering and shouting and using party songs on the workers as they go and come? Do you think that is conducive to getting them to join the union?

Mr. Woods: Your Honor, I don't think he has testified to those matters in the question.

Mr. Shaver: Well, Mr. Youngdahl testified to it. He was there. I can ask the questions over.

The Court: Ask him about scab.

By Mr. Shaver:

Q. Well, do you think calling workers "scab" going to and from a place of business is going to persuade them to join you?

A. I would say no.

Q. All right then. Why did you do it?

A. They have taken a position in a—in the Union situation. I would be—they have taken a position that they want

to be on that side or this side. Calling people scab, for example, in this situation, I don't think anyone was incriminated or coerced. I don't know of anyone who stopped [fol. 101] going in there or who was afraid to go in there. I don't know of one person. Everyone did come in and come out. Some of the non-strikers did wave at the strikers who were singing. Some of them did say things back. I don't know of anyone who was frightened out of going in to work.

Q. Well, it's just a matter of common sense. Faked you would throwing words at people in that atmosphere with the pressure exerted right there on them at the time with the picket walking back and forth and with a tent over here with a group over there hollering while the picket goes up and down the line, under Union techniques do you think that is conducive to getting the workers to join your group. Is that what you mean?

A. No, it isn't. They have taken a stand on the issue and that is it. They have chosen to cross a picket line to go to work. I don't think the things that you mentioned such as coercion and intimidation, I don't think it did that. I didn't see anyone turn around ever.

Q. What was the purpose of it?

A. I would guess it is an emotional thing. People were venting their emotions by shouting like arguing with my wife.

Q. In a group out there, if you charge the atmosphere with emotion and you charge the atmosphere with tenseness and you can't control such, and, therefore, they say things [fol. 102] that you don't want them to say, is that right?

A. My constant instructions were that there would be no obscene language or threats.

Q. I know, but —

A. We—I did—I have been in a situation. I did not participate in this. I have been in a situation where I became rather emotionally involved in this. It is a terrible thing when you are trying to what we feel fight for your rights to see someone go in there and undercut you and hurt you because by going in and working and fighting what they believe is right, you become terribly emotional and you yell.

Q. You really don't believe that, do you? You really don't believe that, do you?

A. That it is a terrible thing for people to follow.

Q. No, here's people that were already employed and you all come over here from St. Louis, Chicago and Little Rock, haven't got a member on strike, haven't got a member out there of the Union and go out there and throw a picket line around people who need to work, now you don't—

Mr. Woods: Your Honor, I believe that question is argumentative.

The Court: He is on cross examination. Let him go.

By Mr. Shaver:

Q. You don't really believe that? We have a right to be [fol. 103] employed individually in this State, don't we?

A. That is true.

Q. All right. Isn't it a terrible thing also that when people want to work you throw a picket line around them and won't let them work ever though they were employed?

A. That has not happened. I think it is a terrible thing to have violence. There has not been any violence. I think it is a terrible thing for workers to fight with each other. I think it is a terrible thing for someone to go in and cross a picket line and in that way undermine other people's efforts to better themselves and get better working conditions and so forth. I think it is a terrible thing.

Q. Now, I want to ask you this. What kind of furniture did you have in your tent and where did you get it?

A. Well, as far as I can recall, the tent itself was loaned from another Union out of Little Rock. One of the striker's husband made three benches for us. There was a telephone there. There were two or three chairs. Later on in the week we had a card table. Later on in the week another table. I don't know where they got that table as far as I can recall.

Q. These benches, how many people would these benches hold?

A. Oh, I will say about six. It depends on how close you sit.

Q. I mean each bench would hold about six people, is that right?

[fol. 104] A. I would say that these benches were made in the original—the original strike.

Q. Now, why would you have three benches that would hold six people? That would be eighteen people?

A. Uh-huh.

Q. And then have all those chairs around there? You expected people to be there, didn't you?

A. We invited them to come down to visit with us. When the benches were first made in the original—original strike, we didn't have a table and they were used to eat off of. We would buy food and spread it out on the benches and that did serve as our table. That is why we got three instead of two, for one—

Q. Did you serve food down there?

A. Oh, yes.

Q. Did you serve food for people you invited to come down there?

A. If they were there at lunch time, they were invited.

Q. Did they serve soft drinks?

A. Yes, sir.

Q. Did you have a cook stove there?

A. No, didn't have a cook stove. We had a burner, no actual cook stove.

Mr. Shaver: I believe that is all.

Redirect examination.

By Mr. Woods:

[fol. 105] Q. Now, Mr. Becker, as I understand it, you first had this picket line and then the strikers abandoned—the picket line was abandoned anyway, and you notified the company to that effect and asked them informally to reemploy these people and they did make application, is that correct?

A. That is right. They went into the Company and made application for employment.

Q. And the Company refused to reemploy or reinstate these people?

A. That is correct.

Q. And that was actually one of the principal reasons for reestablishing the second picket line, is that correct?

A. That is correct.

Q. Now, I believe you stated that you saw no problem at all of ingress or egress from the plant property from your observation?

A. None whatsoever.

Q. You never saw any problem arise down there at all?

A. None whatsoever.

Q. I believe Mr. Shaver asked you about epithets. I want to be sure that you understand what the word epithet means. Do you understand epithet to mean insulting or offensive language, or just what do you understand it to mean?

A. I understand epithets to be vile and vulgar language such as curse words. That is by understanding.

[fol. 106] Q. And under that definition, no epithets were used, is that right?

A. No.

Q. Now, as far as insults are concerned, a word that might be insulting to you might not be at all insulting to someone else, is that true?

A. Yes, sir.

Q. Of course, you are employed in the labor movement. I mean you are a Union organizer, an official and the word "scab", of course might be insulting to you, but someone else might not pay any attention to it, is that right?

A. Yes, I can see how that is.

Q. And certain types of people who are extremely anti-labor might even regard it as a badge of honor, isn't that right? I mean they might be proud of it.

A. It is very possible.

Q. So it all depends on who the word is used to, the effect of it, the recipient of the term so to speak, the recipient of the language as to whether it is an insult or not, is that right?

A. That is right.

Q. And you say that you found the word "scab" in Webster's Dictionary, is that right?

A. Yes, sir.

Q. You have found the word "scab". It is a recognized English word, isn't it?

[fol. 107] A. Yes, it is.

Q. Right there in Webster's Dictionary?

A. Yes, sir.

Q. A word like most other words is susceptible to a lot of definitions. I mean some people regard it in the narrow sense, is that right, and other people regard it in the broad sense?

A. That is right.

Q. And some people would define it as probably someone who goes into a plant and takes another man's job who is on strike. Some people might give it that narrow definition, isn't that correct?

A. Yes, sir.

Q. And others might give it a broad definition and say that anyone that crosses a picket line, is that right?

A. Yes, sir.

Q. Anyone that crosses a picket line would be a scab. Now, you say as far as these benches are concerned that you didn't only use the benches for seats, but you also used them for tables?

A. Yes, we did.

Q. To eat off of?

A. (No response.)

Mr. Woods: I believe that is all.

[fol. 108] Recross examination.

By Mr. Shaver:

Q. Now, Mr. Woods did a wonderful job of interpretive gymnastics. Now, let's see—let's see if I understood what you said. Suppose a man is calling you a bastard. Has that got three or four different meaning to you? I want to see your thinking on this thing. Would that make you mad?

A. Would it make me mad?

Q. Yes.

A. Yes, it would.

Q. Yes. All right. If anybody would call you a scab, would that make you mad?

A. I have to project—it is difficult to project or envision that. I don't think so.

Q. You don't think it would?

A. I know my position on this. I don't think it would anger me too much.

Q. Now, all right. We got that. Now, if a group of people assembled on strike and were standing and hollering and jeering, another group coming out hollering "dirty scab, fat scab, pony-tail scab" and their attitude looking belligerent, would you think that would excite you any if you was in that group coming out?

A. Several times one of the non-workers yelled that word at us.

[fol. 109] Q. You didn't answer my question. You are not answering my question.

A. Well, I can't—I would—I can't say whether someone would be insulted or excited by it. Some people when they were called at would smile and wave and some people would look very angry. I would—I think they should be insulted.

Q. You think they should be insulted?

A. I think so.

Q. Well, then what is the purpose of your crowd hollering that, to insult them?

A. Yes, I—

Mr. Shaver: That is all.

The Court: Let me ask you, Mr. Becker, what does the term "mass-picketing" mean to you?

The Witness: The term "mass-picketing" to me means several—several, two or more people walking or patrolling, two or more up to say several hundred or whatever it is walking in front of a plant or an entrance with the sole purpose of blocking egress and ingress. A large—I would say a large group of people, two or more people.

Redirect examination.

By Mr. Woods:

Q. Now, Mr. Becker, on this scab business, of course, if anyone called you a scab you would probably ignore it [fol. 110] because it would not be true, isn't that right, because you just wouldn't engage in that type of activity because of your principles, is that right?

A. That is right. It is difficult to even envision someone calling—

Q. You can't imagine yourself being in that position?

A. No, sir.

Q. So you would probably ignore it?

A. Yes, sir.

Q. But you feel that people ought to be insulted by it?

A. Yes, I do.

Q. Because you feel they ought to have the same principles that you have, in other words, you—is that right?

A. It is a word which means people crossing a picket line which to me is a terrible thing.

Q. In other words, you would like for the people—would like to get these people to reflect on their acts and to see if they might desire to change them, is that right?

A. I am sorry I didn't—

Q. I mean the purpose of calling someone that might be to get them to reflect on their activities to get them to more or less examine themselves, do a little soul-searching, is that right?

[Col. 111] A. I think it would cause people to think of the word, the meaning of the word and whatever it might connote or mean and ask themselves what the word means.

Q. The mere fact that you look at the word "scab" in this manner or in this way or interpret it in this way doesn't mean that everyone shares your viewpoint, isn't that right?

A. Absolutely.

Q. You would hope that more people would share your viewpoint, is that right?

A. I would hope that we could wipe the word from the dictionary and all—and there would be no need for the use of such a word.

Q. But you realize that there are a lot of folks that disagree with you?

A. Yes.

Q. As a matter of principle? I mean they feel as strongly one way as you do the other.

A. A matter of principle, a matter of democracy, people have a right to believe what they want to.

Mr. Woods: I believe that is all.

Recross examination.

By Mr. Shaver:

Q. Now, you don't—you are not limiting the definition of the word "scab" to your belief when you just got through [fol. 112] saying you considered it an insult and it was given and hollered at the other people for the purpose of insulting them. You made that statement a minute ago.

A. That is right. In projecting this thing, I would imagine or say that it would be insulting.

Q. It would be?

A. (No response.)

Q. Now, you know a scab—

A. Give me the definition, if people knew what the definition is, there is a—

Q. The common acceptance of a scab is a sore healing over on your body, isn't it? Don't we call that a scab?

A. It has that interpretation.

Q. Huh?

A. It has that interpretation. The dictionary says mange.

Q. Mange. It has a lot of inferences when thrown at people; hasn't it? You can pick out any one you want. You look at it as an honor because, in one sense of the word, because you couldn't imagine anybody calling you that.

A. It has many, many definitions. People would react differently to it I am sure in many different situations.

Mr. Woods: Well, it wasn't being used in the sense of any medical term out there, was it?

The Witness: No, sir, it wasn't.

Mr. Shaver: What was it being used in?

[fol. 113] The Witness: It was being used to call or indicate to the people who were crossing the picket line that they were in fact a scab.

Mr. Shaver: That is all.

Mr. Woods: I believe that is all.

(Witness excused.)

The Court: *Would* will be in recess for lunch until 1:30.

Thereupon, the hearing was recessed until 1:30 o'clock, p.m., Friday, July 1st, 1955.

[fol. 114]

AFTERNOON SESSION

(1:30 o'clock, p.m., Friday, July 1st, 1955.)

The Court: The hearing will come to order.

Mr. Woods: Judge, we would like to call Mr. Becker back and ask him one question.

The Court: All right, sir.

Mr. Woods: I would like for him to clarify something

The Court: JEROME BILL BECKER, recalled as a witness on behalf of the defendants, after having previously been first duly sworn by the Clerk, in answer to questions propounded, testified further as follows, to-wit:

Direct Examination.

By Mr. Woods:

Q. Mr. Becker, the Judge a while ago asked you about mass-picketing. That is an important point in this case and I wanted you, to get you to clarify it. Now, would you again state by way of clarification what you interpret as being mass-picketing?

A. I would interpret it to mean two or more, several up to large groups of people picketing or patrolling in such a way as to block people from going in and out, whether two people do it or a hundred people.

Mr. Woods: That is all.

Mr. Shaver: That is all.

(Witness excused.)

[fol. 115] Mr. Woods: I think Mr. Shaver wants to call someone out of turn here which is all right with us.

Mr. Shaver: I want to call Mr. Charlie Ford. He wants to get away. I think he is on his vacation and I just wanted to call him.

The Court: All right.

Thereupon, CHARLIE E. FORD, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to question propounded, testified as follows, to-wit:

Direct Examination.

By Mr. Shaver:

Q. What is your name?

A. Charlie E. Ford.

Q. How old are you, Mr. Ford?

A. Thirty-eight years old.

Q. And what do you do?

A. I am an Agent for the Metropolitan Life Insurance Company.

Q. Do you live in Wynne?

A. Yes, sir.

Q. How long have you lived in Wynne?

A. About between thirty and thirty-five years.

Q. Have you had occasion during the last week that the [fol. 116] picket line was going down at the Rainfair to go down there?

A. Yes, sir, I did, on Monday, June 20th. On two different occasions that day I was there at the plant.

Q. Now, the first time you went down there was in the morning or evening?

A. It was in the morning.

Q. Morning?

A. Yes, sir.

Q. And what happened to you when you went there? Will you just explain.

A. Well, I had been there on other occasions to the plant in my course of business and I have been subjected to jeers and other calls as made by the strikers. I have realized being a citizen of the community that I could help the situation and my business there was strictly personal and I felt like the less said the better, and upon my visit there that morning I made no utterance whatsoever. I am not positive, I think perhaps I did speak as a matter of courtesy to one of the strikers whom I am well acquainted with. In fact, her daughter is a member. She has two daughters who have been members of our Church, and I spoke to her

out of courtesy, but beyond that that was all. I answered not at all to those who made different calls whatever, however, you might express them, and I am not positive whether that morning or whether it was in the afternoon when I [fol. 117], made my return, but I was called a scab. I likewise, was told I couldn't cross the picket line or, that is, that I shouldn't cross the picket line.

Mr. Woods: That you shouldn't? Excuse me I didn't—that you shouldn't?

The Witness: Well, that I couldn't.

Mr. Woods: Shouldn't or couldn't?

The Witness: I could not cross the picket line and, of course, other calls, since I wasn't down there to take issue with one side or the other I felt like the least said the better. Now, that was that morning.

By Mr. Shayer:

Q. All right. Now, when did you go back?

A. I was told by the bookkeeper that Mr. Bonady, the reason for my call there on my insurance business, would be back after dinner, so I don't recall the exact time that I was back. I know probably it was between one and two o'clock. As I say, I had made other calls. In my line of business we try to tend to each personal contact as quickly as we can, get our business over with, and when I made the second call Mr. Bonady still had not come, but it wasn't too long while I was sitting there in the bookkeeper's room, ante-room, whatever you might call it. Mr. Bonady showed up and in looking out the window I noticed that he had to stop his car because one, I assume, one of the strikers was [fol. 118] walking on the right hand side of the road. He had to stop his car to avoid hitting her and he did so. As far as I could tell, there was no conversation between the two. He went on into the driveway on into the plant and got out and then we had our business and I left the plant, went out into the road and I was told that—asked if I took a job. They told me that they worked people there pretty hard on the sewing machines. They would only be paid seventy-five cents an hour, and I told the persons because I felt like I had taken it up that I was a citizen of this community and then—in other words, it is my responsibility

being a citizen that I ought to be as good a citizen as possible and I feel the same way about the strikers, that they have a responsibility toward this community the same as I do as a citizen whether I have business down there or not. So I told them that I already had a job, that I wasn't there seeking a job, and I was well satisfied with the job that I had and that is about the context of my talk, and I got in my car and I left. Nobody tried to stop me or molest me in any way.

Q. Now, you stated that you were jeered, jeered at. Where was this jeering coming from?

A. It came close to where the strikers were assembled. As I say I got a—I didn't take a picture of where the different ones were. Some were on the edge of the road to [fol. 119] the best of my memory. My natural impulse was to get away. I had other people to see and I didn't have time to stand there and argue pro and con one way or the other, so as I say the people that are striking, some of them are my friends the same as *though* who are working in the factory. I had no reason one way or the other to be violently opposed to or for either side. I am opposed to people molesting even in an oral way someone in the pursuit of their business, and it was my business to be there and I felt like that they were out of line in addressing anything to me in that manner.

Q. Well, now let me ask you this. You said something about Mr. Bonday driving in there, Mr. Pete Bonady, the manager of the plant?

A. Yes, sir.

Q. And you were looking out of the window there and did the one on the picket line attempt to move, get out of the way or what happened there?

A. This person that Mr. Bonday had to stop for looked—it was sort of an impression to me, of course. It's a personal impression that he had just better not run over her and actually he made no attempt to run over her. He wasn't driving fast. He was approaching slowly and he stopped his car. He said nothing to her as far as I could determine and she went on her way on down the road on the [fol. 120] right hand side.

Q. Now, you don't work down in that plant?

A. I do not.

Q. And what was your business down there?

A. Mr. Bonady is one of my clients. I call to collect for one of his children's policy that he has in effect with my company.

Mr. Shaver: That is all.

Cross Examination.

By Mr. Woods:

Q. Mr. Ford, which striker did you speak to?

A. Mrs. Lloyd, Mrs. D. B. Lloyd.

Q. Mrs. D. B. Lloyd?

A. That is correct.

Q. You say she is a member of your Church or her children are members?

A. I didn't say. Yes, her daughters are. I don't believe she is.

Q. You don't know whether she is or not?

A. No, sir.

Q. Now, when you were engaging in this conversation with the strikers, were you talking with Mrs. Lloyd, or was it someone?

A. No, I wasn't.

Q. Was it with one particular individual or a whole group?

A. Just in general.

[fol. 121] Q. Just in general.

A. It was one or two as a group. I don't believe—I don't know exactly how many were in the group. I say possibly a dozen, but there again I didn't count them. I had no reason to, but it seemed—

Q. You all had a pretty good conversation there back and forth I gather? I mean you talked quite—

A. No, sir, we did not. I have told exactly the conversation I had. It was very limited.

Q. Well, it kind of sounds like you did most of the talking, didn't you? Didn't you do most of the—

A. No, sir, no, sir.

Q. Well, you did quite a bit of talking. I mean just judging from your testimony it took you several minutes

here to detail just what you said, and I just gathered that you had done quite a little talking.

A. I said that I did little talking, sir.

Q. Now, with reference to the statement that you could not cross the picket line, you went ahead and crossed the picket line, didn't you?

A. Sir, I was there on personal business. It had nothing to do with the pickets. It had nothing to do with the factory. My business was personal. I was asked to come to the factory to collect for the insurance that's in effect. That was my business there.

Q. Well, I understand that, but I mean you went ahead [fol. 122] and crossed the picket line? What they said to you didn't stop you from going on into the plant and tending to your business, did it?

A. That is correct.

Q. As a matter of fact, it didn't bother you very much, did it?

A. Well, other than it nettled me, perhaps, as you might say.

Q. But you didn't turn around and go back to town? I mean you went on in and transacted your business?

A. I did.

Q. Now, with reference to this car coming down the road, you say that someone was walking down the righthand side of the road. Now, is that the righthand side looking from Martin Drive?

A. It is looking south.

Q. I am a little bit confused sometimes on my directions.

A. To the rear of me.

Q. I see. And was that individual carrying a picket sign?

A. No, sir.

Q. How do you know it was one of the strikers?

A. I said I assumed it was one of the strikers. I did not say that she was one of the strikers. I said that I assumed that she was.

Q. You don't know. I mean it may have been just a passerby walking down the road?

A. Again I say I assumed it was because she wasn't—if she had been just a passerby, now I am assuming, you

[fol. 123] understand, in explaining what would be realistic. She was walking down the road. If she were actually—the proper method of walking on a road is not on the righthand side. It is on the lefthand side. You walk approaching cars approaching you. You do not walk on the same side as cars are going.

Q. Well, did you ever see that particular safety rule violated around here?

A. Yes, sir.

Q. It is pretty commonly violated, isn't it?

A. That is true.

Q. And there is no sidewalk down there, is there?

A. Except to the plant, no, sir.

Q. And pedestrians, I mean all pedestrians using that street at that point use the road, don't they? I mean that is about the only place they can use, isn't it?

A. No, sir, they can use the lefthand side, sir.

Q. Well, I mean they have to use the road, either the right or left hand side? In other words, there are ditches on each side of the road, isn't that right?

A. That is true.

Q. And no sidewalks?

A. That is true.

Q. So they have either got to walk down the road either on the righthand side or lefthand side or down the ditch, isn't that right?

A. Yes, sir.

[fol. 124] Q. You said that you have some conversation about taking a job in there. Apparently these people or some of them possibly thought that you were going in the plant to take a job or apply for a job and I believe you said that some of them asked you if you were applying for a job in there.

A. They hollered that at me not in just normal conversation but just sort of as you would throw something across a room.

Q. Well, I mean were they serious about it or was it facetious?

A. It would seem like it was more or less a jest or it was a question I might say.

Q. And they mentioned about seventy-five cents an hour?

A. Yes, sir.

Q. Now, you say you are opposed to molesting anyone in an oral way. Now, does that mean that you are opposed to free speech, Mr. Ford?

A. I am opposed to abusive language. I think the Golden Rule should certainly apply in labor conditions the same as it would apply in other modes of life. I think that we ought to treat one another in fairness and in justice, yes, sir.

Q. Well, now who is—who is to decide just when somebody else's talk is to be limited? You mean that you think if someone is using speech that you don't like you ought to have the power to decide to shut them off? Do you think that would be good in this country?

A. I think that we shouldn't have the power to abuse [fol. 125] people without there being some kind of law that would protect the innocent, yes, sir.

Q. Did you regard these people as abusing you?

A. I think they used unnecessary language, yes, sir, I did.

Q. Well, unnecessary language doesn't necessarily mean abusive language, does it?

A. Well, that is one explanation for abusive.

Q. Now, you mentioned an expression on this person's face that was walking down the road in this incident involving Mr. Bonaday. About how far away were you? What window were you looking out of? Was it a front window in the plant or side window, or what window were you looking out of?

A. It would have been a front window.

Q. A front window?

A. Yes, sir, because I sat right next to it.

Q. And you could look out of the window there out in the street and see this expression on this person's face?

A. Yes, sir, the road is not very far from the office.

Q. How far would you say?

A. I would say possibly forty or fifty feet.

Q. Forty or fifty feet. You don't know whether they were talking to each other or not? You said you didn't believe they were talking.

A. I said I didn't believe they were. I saw no conversation pass between them.

[fol. 126] Q: You saw no conversation?

A. I heard none.

Mr. Woods: I believe that is all.

Mr. Shaver: That is all.

Mr. Woods: Wait, just one question. Yes, let me ask him just one more question.

By Mr. Woods:

Q. Now, you, I believe you said on that day you went in and out on four different occasions, is that right?

A. Twice, sir.

Q. I mean you went in and out would have been four in all?

A. That is true.

Q. Did you have any trouble getting in the plant at all?

A. No, sir.

Q. No trouble getting in or out?

A. No, sir.

Mr. Woods: That is all.

Mr. Shaver: That is all.

The Court: Just a minute, Mr. Ford. I want to—where was it? How many different people did you talk to down there, do you know?

The Witness: As I say, I was there on two different occasions. I spoke to Mrs. Lloyd.

The Court: I said the last occasion.

The Witness: The last occasion.

[fol. 127] The Court: When was it you say they called you a seab?

The Witness: I think it was in the afternoon.

The Court: Was that on the first one?

The Witness: It was either in the morning or in the afternoon. As I say, I was there on both occasions and I wanted to get my business attended to there without—as I say, I had been there before and there had been other calls and I knew the situation as it was, and I was interested in attending to my business and getting away with the least amount of friction.

The Court: How many people did you talk to on that occasion, that second occasion?

The Witness: There seemed to be one person who was mainly, the little lady, I couldn't name her name because I don't even know who she is. Most of the women I don't know who they are, but there was one particular woman in particular. She was doing most of the talking, and she asked me about the job, if I got one and what I would make and this, that and the other.

The Court: Was she by herself when you were talking to her?

The Witness: She was on the edge of the road, yes, sir.

The Court: And where were the other people?

[fol. 128] The Witness: Well, they were about there in that general area. Some of them were on the bank. They were not congregated there as a whole there on the road, but she was on the road herself.

The Court: Was she the one who called you the scab?

The Witness: I would think she was, yes, sir. I would say she was.

Mr. Woods: I would like to ask you just one other question.

By Mr. Woods:

Q. You are not a member of the Union, are you?

A. I am not, sir.

Q. I mean you are not a member—are you a member of a Union?

A. No, sir.

Q. Aren't most of the Metropolitan's agents in a Union?

A. I couldn't answer that, sir. Down here in the South as far as I know, they are not unionized.

Q. Up in the East you are pretty well unionized?

A. I understand that is correct, but to what extent, I don't know.

Q. Did you volunteer to come here to testify or did Mr.——

A. I was subpoenaed, sir.

Q. You were subpoenaed?

A. Yes, sir.

Q. I see.

[fol. 129] A: As I say, I am not prejudiced to either side and I make myself clear on that issue.

Q. Who secured this information from you? I mean how did you—who did you tell about your experience out there? Did you tell Mr. Bonday?

A. Sir, I had occasion to talk to another law officer. I don't—is it necessary that I mention his name?

Q. Well, I just wondered how you happened to do it.

A. I talked to a law officer because I was there again in the pursuit of my business. He likewise has insurance with me and, in fact, I caught him in his garden and we discussed the matter pro and con and I told him that I was afraid if the thing continues there's going to be violence, and I believe that sincerely. I believe that unless this thing is cleared up in a just and as near fair manner as can be cleared up that there will be violence on this situation and so I talked to him in the pursuit of my business and as a friend. I think we should talk to our law officers whenever there is a problem that's in our community.

Q. Do you have any insurance with the Union or any members or applicants of any strikers, let's say?

A. No, I do not.

Q. You don't have any.

A. As far as I know I have talked to a couple who have been strikers. Whether they are still lined up with the present strikers I do not know. You see, this is not the first [fol. 130] difference between the Company and your co-workers.

Q. Mr. Ford, you don't know of your own knowledge of any violence having occurred out there, do you?

A. Other than what has been told me. Certainly it isn't my place to snoop around out there.

Q. Well, I don't want what has been told you. I mean you of your own personal knowledge don't know of any violence out there?

A. I know only what I have been told.

Q. We don't want that.

A. No, sir, that is true.

Q. Of your own knowledge you don't know?

A. But it isn't my business to get out there and snoop.

Mr. Woods: I believe that is all.

Mr. Shaver: That is all.

(Witness excused.)

Thereupon, WOODROW CHANDLER, called as a witness on behalf of the defendants, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct-examination.

By Mr. Woods:

Q. State your name.

[fol. 131] A. Woodrow Chandler.

Q. And address. Where do you live?

A. I live in North Little Rock.

Q. By whom are you employed?

A. The Amalgamated Clothing Workers of America.

C. I. O.

Q. Mr. Chandler, have you lived in Arkansas all your life?

A. Yes, sir, I have.

Q. You were born here and lived here all your life?

A. Yes, I have.

Q. Mr. Chandler, to conserve time and move along and not—avoid some repetition, you were here and heard the testimony of Mr. Youngdahl and Mr. Becker this morning?

A. Yes, sir.

Q. And were you present? I mean you are assigned to the strike, isn't that right?

A. That is correct.

Q. From the period mentioned in this petition which is June 20th down to the time that the injunction was issued, were you present at all times?

A. Yes, I was, except just for what time I run to town on errands. I was here in Wynne all that time.

Q. And out there on the scene?

A. On the scene.

Q. Other than to run down to get some cigarettes or something?

A. That is right. That is correct.

[fol. 132] Q. Just to save time, now you heard these gentlemen's testimony concerning the conditions out there. Would you say that they had fairly described the conditions existing at all times; that is, with reference to the parking of automobiles, with reference to the location of

the tent, with reference to how many people were present in the tent, with reference to how many people were walking the picket lines? Do you agree in general with their statements?

A. Yes, sir, I do.

Q. Testimony?

A. Yes.

Q. There is one thing I would like to go into. I believe you arranged the rental of this property?

A. That is correct.

Q. There across the street?

A. That is correct.

Q. Who did you lease or rent the property from?

A. A gentleman that owns it, operates the ice plant in Wynne, Arkansas. I don't recall his name. I don't know who he was.

Q. You don't recall his name?

A. No, I don't.

Q. How long a lease did you secure on the property?

A. For one month.

Q. For one month?

A. Uh-huh.

[fol. 133] Q. And you paid him for leasing it?

A. Yes, I did.

Q. And you secured a receipt?

A. That is correct.

Q. And you have had undisturbed possession of the property since that time?

A. That is correct.

Q. You were acting as the agent of the Amalgamated Clothing Workers?

A. Yes, sir.

Mr. Woods: I believe that is all.

Cross-examination.

By Mr. Shaver:

Q. Mr. Chandler, where were you born?

A. I was born in England, Arkansas.

Q. England?

A. Yes, sir.

Q. And have you lived—where do you live now?

A. North Little Rock.

Q. And how long have you lived there?

A. I have lived in North Little Rock for the past fifteen years excusing the time I was in Service.

Q. How long have you been connected with this Union?

A. This Union, I have been connected approximately a year. Prior to this I was connected with another International Union.

[fol. 134] Q. What Union were you connected with prior?

A. With the Optical Workers, I. U. E.

Q. And where was it?

A. Little Rock.

Q. Prior to that time what Union were you connected with?

A. Prior to that time I was in the service.

Q. In the service?

A. Yes, sir.

Q. So after you got out of the service your Union connection has just been with two Unions?

A. Two Unions, yes.

Q. Now, when did you have your first meeting over here to organize this, to picket this plant the last time?

A. In Forrest City, Arkansas, on Friday, prior to starting a picket on Monday.

Q. Were you placed in charge of the picketing?

A. No, sir, I definitely was not.

Q. Who was placed in charge of that?

A. Mr. Bill Becker, Jerome Bill Becker.

Q. What was your duties?

A. I was just National Representative.

Q. What was your duties on the picket line?

A. My duties on picket line was to maintain peace, take care of the details, rent the lot, take care of the food and so forth.

Q. Wait a minute. Now, your duty on the picket line was to maintain peace?

[fol. 135] A. That is correct, no violence.

Q. In other words, you were assigned there to be the peaceful representative of the Union?

A. I was assigned to take care of the details as I explained and then was—was always instructed to see that

there was no violence, no fights and so forth on the picket line.

Q. Well, did you think there would be violence on the picket line?

A. No, that is a normal procedure. We always do that. That is our first instruction, peaceful picketing.

Q. So you leased this property from Mr. Huelin Bridges, didn't you?

A. That is correct, Huelin Bridges, yes.

Q. And you leased it for a month?

A. For one month, correct.

Q. Well, why did you take it for such a short time?

A. For such a short time?

Q. Yes, if it was going to be your headquarters.

A. Well, as a rule we rent the property by the month. We don't ever rent them farther than that in advance.

Q. Now, what did you lease it for?

A. \$10 a month.

Q. Well, I mean for what use were you going to use the property?

A. For our headquarters of the strike.

Q. Now, what do headquarters do in a strike?

[fol. 136] A. Well, they provide a place to serve the lunch to people that stay while they are not all picketing, to change the picketing and so forth, install a telephone to call the people that we have to call and contact, and they have to call us.

Q. Well, do you have tables out there? You heard the testimony about the tables and the benches and the chairs?

A. We have two tables out there. One of them is a card table and one of them is a table that's rented to us to eat off of, serve sandwiches and soft drinks and so forth.

Q. Well, you have enough chairs for all your friends to come around and sit?

A. We only have four chairs.

Q. How many benches? You heard him testify about the benches.

A. We have three benches.

Q. Well, now he said they would hold I believe about—I forget how many people those three benches would hold and the chairs. They were down there for some purpose, were they not, Mr. Chandler?

A. We had two benches made for a meeting that we had prior to this, and we used those benches to eat off of until we got this table loaned to us by one of the people that was carrying a picket sign.

Q. And you heard Mr. Youngdahl testify that on Tuesday five of the top organizers were there? You heard that, didn't you?

[fol. 137] A. I didn't hear him testify there were five of the top organizers. I heard him testify there were five organizers, representatives there.

Q. Five organizers and about eight or ten other people there. Do you agree with that?

A. No, I don't believe there were that many people there. I would say there were six people and the staff.

Q. All right. That is your best judgment, isn't it?

A. That is correct.

Q. Now, you were present when they, all of the time down there, were you not?

A. That is correct outside of running to town and getting a pack of cigarettes and other errands I had to do.

Q. And you could hear the jeering and the words and epithets and things hollered across there at the workers as they go and come?

A. I heard everything that taken place on the picket.

Q. All right. What did you hear?

A. I heard the people sing songs.

Q. What kind of songs?

A. Union songs, for instance, "I will roll it over you" as Mr. Young stated, two or three different songs, Union songs, out of the Union song book.

Q. You have some song books over there?

A. We have a song book that's put out by the Amalgamated Clothing Workers that's pertaining to Union songs.

Q. Is Davy Crockett in that book, the one they were singing down there?

A. I don't recall. I don't sing the songs. I don't recall whether Davy Crockett is in there or not.

Q. All right. Go ahead. What was the group where you were assembled under and around the tent hollering to the workers as they would go back and forth?

A. What? Repeat the question please.

Q. What was the group assembled around the tent there and along the line there hollering to the workers at the plant as they go back and forth? Did you hear anything at all?

A. Yes, I heard them hollering from both sides pro and con.

Q. What did your group holler over there?

A. They hollered that they were crossing our picket line and that they were scabs as they would cross the picket line. They shouldn't cross the picket line. They were fighting their battles.

Q. Well, didn't you hear them holler that they were fat scabs and fuzzy scabs and scabby scabs and pony-tailed scabs? You never heard that, did you?

A. No, sir, I didn't.

Q. That didn't happen?

A. I didn't hear it, not to my knowledge.

Q. Well, you were there, weren't you?

[fol. 139] A. Definitely.

Q. And you wouldn't do nothing but tell the truth, would you?

A. That is correct.

Q. That is right. Now, will you tell this Court why your group would assemble at different times as the labor was going and coming along the edge there where your tent was and jeer and holler at these workers as they went back and forth? Why did you do that?

A. Well, I would say that to make the people realize that they were going back in the plant working when they were fighting for better working conditions.

Q. Well, now, when you holler at a group of people and I believe you admitted scab. That is all you have admitted. You say that they hollered, isn't it?

A. That is correct.

Q. That is the only thing they hollered?

A. To my knowledge.

Q. All right. When they hollered that word "scab" across there, what did you understand a scab to be?

A. I understand a scab is anyone that will cross a picket line.

Q. Is that the way you say a scab is?

A. That is what I say a scab is.

Q. Well, do you know what the dictionary says a scab is?

A. I heard Mr. Becker.

Q. I have got one here now. It is the Third Century

[fol. 140] Dictionary. Now, do you agree to this word? A scab is any of the various cutaneous diseases in man as the itch, a mangy disease in animals and people, any divers fungus diseases of plants usually producing dark, crust-like spots, also the encrustations which form over a sore during healing, also a rascal or scoundrel, slang,—that is in parenthesis,—an opprobrium, a workman who refuses to become a member or to act with a labor union, who takes a striker's place or the like, to become covered with a scab as a sore.

Q. Do you agree to any of the dictionary definitions of scab?

A. Well, the dictionaries probably show medical terms. I agree with the scab in a labor movement as someone that crosses over a picket line, that takes someone's job that's out on strike.

Q. Well, what is the purpose of hurling the word "scab" at a worker that's going in there, to insult them?

A. Yes, I would say it would insult them.

Q. And then what was the purpose of picketing them, to assault the workers as they went in?

A. The purpose for picketing was the company violated taking the people back when they went back. The purpose of picketing was to show the people and the company that they refused to take them back.

Q. Now, going through—I can't envision what goes through people's minds. We try to, but in your philosophy of labor law you think it is good public policy to insult the [fol. 141] workers as they go to work? Is that what you think?

A. Repeat the question, please.

Q. I said I can't know what is in your mind, but I am asking you is, in your labor philosophy in the purpose of calling them scabs as they go to work is to insult them?

A. Are you asking me for my personal opinion?

Q. Yes.

A. I am telling you that anyone that crosses a picket line should be called a scab. I would never be called a scab because I would never cross a picket line.

Q. Well, now, are you imbued with a crusade of righteousness with reference to this picket line deal? In other words, is that the foremost thing in your mind?

A. Repeat that, please.

Q. Is the fact that somebody crosses a picket line contrary to your viewpoint, does that excite you to any extent to where it brings on where you would holler and jeer at folks?

A. No, it doesn't excite me.

Q. Well, why would you holler and jeer and holler scab at them then?

A. It might excite some people, but it wouldn't excite me.

Q. Do you know anything lower in your philosophy of life than a business man crossing a picket line?

A. Repeat that please.

Q. Do you know anything lower in your philosophy of [fol. 142] life than a business man crossing a picket line?

A. Oh, there might be things lower, yes.

Q. You think there would be, huh?

A. Well, I suppose there would be something lower, yes. To my understanding it would be pretty low.

Q. In other words, it could be lower?

A. Yes, it could be lower.

Q. Do you hold the philosophy that people who want to work and had jobs there at the time that the people that the people that struck had jobs have no right to work?

A. Repeat that please.

Mr. Shaver: Read it back to him. He has got a good—

(Question read.)

The Witness: They have a right to work.

By Mr. Shaver:

Q. You mean the people that were there working in the plant at the time that the other workers walked out or left, you agree that they have just as much legal right to go back here and work as they always had if they want to? You agree to that?

A. Yes.

Mr. Shaver: I believe that is all.

Mr. Woods: No further questions.

The Court: I have no further questions.

(Witness excused.)

Mr. Woods: That is all we have except rebuttal.

[fol. 143] Mr. Shaver: I want to call Jewell Newby.

Thereupon, JEWELL NEWBY, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct Examination.

By Mr. Shaver:

Q. What is your name?

A. Jewell Newby.

Q. Do you work at the Rainfair plant?

A. Yes, I do.

Q. I believe that plant makes slacks?

A. Yes, it does.

Q. Is that right? How long have you worked there, Mrs. Newby?

A. Almost sixteen months.

Q. Sixteen months?

A. Uh-huh.

Q. Were you working there when the first group, when the first picket line went on?

A. Oh, yes.

Q. And you have continued to work there since?

A. Yes, sir.

Q. Now, with reference to the plant, let me make it this way, with reference to the plant, the entrance, it faces the East?

[fol. 144] A. That is right.

Q. Now, across Rowena Street which runs on the East side of the plant and a little northwest, a little northeast is Mr. Lee Hamrick's property?

A. Yes.

Q. Now, do you live on the Lee Hamrick property?

A. Yes, sir.

Q. Now, what do you live in?

A. I live in a trailer.

Q. In a what?

A. In a trailer, 30-foot trailer.

Q. And that trailer sits on Mr. Lee Hamrick's lot?

A. Yes, it is.

Q. And kind of northeast from the entrance of the Rainfair plant and on the east side of Rowena Street?

A. Yes, sir.

Q. Is that correct? Now, last Sunday night about 12:30 or along in there sometime, were you at home there?

A. Yes, sir.

Q. In your trailer?

A. Yes, sir.

Q. Who else was present?

A. My daughter, my baby daughter that was with me, the only child I have at home, which will be eleven in August and my daughter that's married.

[fol. 145] Q. And your what, your daughter that is—

A. My daughter that's married and lives at Newport and has a three year old son. She was visiting me at the time.

Q. Now, were all of you present?

A. All of us were present. That is all.

Q. Had anything called your attention to travel on Rowena Street that night?

A. Well, yes, I noticed two that had been molesting me very much which had threatened to move my trailer, threatened to whip me, and which I had, you know, figured that they were up to something that night. They had passed three times in a Ford pickup truck, a black Ford pickup truck owned by Mrs. Roberts' husband, Ross Roberts.

Q. Who were they?

A. Hazel Kennedy and Florence Roberts.

Q. Now, Hazel Kennedy and Florence Roberts, had they formerly worked at Rainfair?

A. Oh, yes.

Q. And were they all—are they the ones, some of the ones that walked out?

A. Yes, they were.

Q. Of the plant and you had noticed them going up and down the street in a truck?

A. Yes, that is right.

[fol. 146] Mr. Woods: I want to object to this line of questioning. I assume Mr. Shaver is going back into this tire puncturing incident, and there is no reference to it in the petition. It didn't occur. I believe as she said she is talking about a fight proposition when no picket line was established. I just don't see where it is relevant.

The Court: Are they parties to this action?

Mr. Shaver: Yes.

The Court: I think it would be admissible.

By Mr. Shaver:

Q. Now, had you gone to bed?

A. Yes, I had.

Q. And from where you were lying, was there any way for you to see out on Rowena Street?

A. Directly, directly through the window which faces the Rainfair plant, and faces Rowena Street.

Q. Did you or did you not have a light on the outside of your—

A. Yes, I did.

Q. Was—did your daughter have an automobile?

A. Yes, she did.

Q. And where was the automobile parked?

A. Well, it was parked beside of the — on Rowena Street opposite the trailer on the side just as far over as she could [fol. 147] get without getting in the ditch which she had been pulling the car in, but it had drug off that night. She parked it in the street and the light shown directly on the car. She had a '48 Dodge.

Q. Now, just tell what you saw happen there.

A. Well, as I said before, these two women were going up and down the street that night for this was maybe the third trip, and I never told her about it for I figured it would upset her, so when they pulled in there I jumped out of bed and she said, "Mother, what is wrong?" And I said, "They are doing something to your car"; and I was watching them out of the window. They pulled the truck directly behind her car for I figured they might have thought they might have awakened me and I would see it, so they come

on to the side of the car as it was parked in the street, and then Florence Roberts jumps out of the truck and takes an ice pick which Mr. Brown states it was an ice pick and punctured the front tire and then went to the back and punctured the back tire, so then I went over to Charles and called the police.

Q. Now, wait a minute. After that happened, what did you do? You went where?

A. Over to Charles. He is a mechanic there. What is his last name? Gossett?

Q. You went over to Charles Gossett's house?

A. To call the police. I walked.

[fol. 148] Q. Why?

A. Oh, I wanted to call the police. I wanted him to check the tires and I wanted him as a witness that the tires was punctured.

Q. Now, does Mr. Gossett work for the Rainfair?

A. Yes, sir, he does.

Q. Did you call the police?

A. Yes.

Q. And did they come down there?

A. Yes, sir.

Q. And later on, were these two, did you prefer charges against these two people?

A. Yes, I did.

Q. And they were convicted here in the Justice of Peace Court?

A. That is right.

Q. For damaging your tires?

A. Yes, sir.

Q. Is that correct?

A. That is correct.

Q. And it is on appeal now to the Circuit Court?

A. Yes, sir.

Q. Now, you said something there a minute ago about certain threats that they made about your trailer. How close was your trailer to the tent the first time it was located over there on the lot?

[fol. 149] A. Well, when they first located the tent there it was put on the North side of Mr. Hamrick's place, but later as they came back on the second strike it was located just the opposite side of my trailer which would make them

on the west side, pardon me, the south side just over the fence.

Q. How far in feet would you think?

A. Well, I wouldn't say over two feet. It was just over the fence. I could pretty well—I could almost touch it over the fence.

Q. Well, now, then you had to go from your place where you live across the street to the Rainfair and back?

A. That is right.

Q. To go to work there?

A. Yes, sir.

Q. Did you go there every morning?

A. I sure did.

Q. What was said to you as you would go across, and how many would say it and where would they be congregated?

A. Well, they would always start out with, "Hi, there, scab," and then they would make fun of my clothing like if I wore a pink dress and yellow shoes and which I have a pink dress and yellow shoes, and if I didn't have the shoes to match the dress they made fun of my clothing and which I am a widow woman and I can't afford shoes for every dress. I have had a hard time and if it wasn't for the job [job 150] at Rainfair I would be on starvation, which I was before I came here. I am very thankful for my job.

Q. Now, how many were there and what other things did they say?

A. Now, there was 37, I believe, out on the street, and of course not all of them calling me names, but just like Mrs.—the lady, Mrs. Kennedy there and she, Mrs. Roberts and Mrs. Lloyd and others on the street.

Q. Well, what did they call you?

A. Well, just "scab" and talk about my clothing, of course.

Q. And how many were assembled there while you were going and coming? How many would be there at that tent before they moved on further down?

A. Well, the usual strikers if they were all there in the morning which generally they were all there, say, at noon and in the afternoon, the strikers, all of them out on strike which was 37 I believe.

Q. Well, now how many of those would you say would

come there at that tent? Would you say there would be as many as 37 there at once?

A. Yes, when they were all there.

Q. Well, did you notice whether they would not only holler at you, but holler at other workers as they went?

A. They sure did. They didn't give me the insulting names which they did others.

[fol. 151] Q. Give some of the names that you have heard them holler at the workers as they would go into and from their work?

A. Well, I really hate to repeat this in Court.

Q. Well, go ahead.

A. Well, to the lady back there that's pregnant, why they would holler out, "You had better bring your hot water along," and that is Ruby, Ruby Reynolds.

Q. Who?

A. Ruby Reynolds sitting in the second row and, of course, they just called the names just like insulting names being scab, which as you quoted, and read it in the dictionary is a very insulting name at the worse.

Q. Well, now how did all this affect you?

A. Well, it made me very nervous because I couldn't concentrate on my work. I haven't brought up my production.

Q. You haven't brought up your production?

A. That is right.

Q. Now, is anyone there—has anyone of them ever threatened you?

A. Well, Mrs. Roberts, she told me if I would come on over to the truck or step outside of my trailer she said, "I will whip you," and I said, "What do you have against me?" And she said, "Nothing only that you are a scab just like the rest" and her husband was the one to ask me to move my trailer during the first strike, the first day of the first strike, why he says, "I guess you know we are going to [fol. 152] move your trailer," and I said, "With whose permission?" And Mr. Hamrick is the man I rent from and he said, "Lee's", and so I walked over to Lee and said, "Is that right?" And he said, "Yes," so what can I do here. So I just reported to the police here and so the next day, I offered my rent. I pay it every Monday morning.

so he refuses on Monday and on Tuesday he takes the rent and I am still there.

Mr. Shaver: That is all.

Cross-examination.

By Mr. Woods:

Q. Now, this tire puncturing incident that you have detailed, Mrs. Newby, just when did that occur? I want to know the exact date when that occurred.

A. On June 20th, about twelve-thirty.

Q. The night of June 20th?

A. The night of June 20th.

Q. That is a Monday night?

A. On Monday morning. You would say Monday morning after twelve o'clock.

Q. It was after twelve o'clock?

A. After twelve o'clock.

Q. The early hours of the morning?

A. Yes.

Q. Of June 20th?

A. Of June 20th, yes.

[Vol. 153] Q. So it would actually I mean I just want to be sure and get it straight. You would consider it Sunday night, but after twelve you would consider it Monday morning which it was?

A. No, I would consider it Monday morning, the beginning of the day.

Q. The beginning of the day on Monday morning?

A. The day of Sunday, after twelve o'clock it is considered Monday morning, am I right?

Q. Yes, and it was about what time on Monday morning?

A. Twelve thirty.

Q. Twelve thirty?

A. Twelve thirty.

Q. Twelve thirty, a.m., on June 20th. That is all I wanted.

A. Yes.

Q. Now, about how far was it from your trailer, your observation point in the trailer to where this truck was sitting?

A. You mean the car?

Q. The car.

A. Well, I would say two or three feet.

Q. Two or three feet?

A. Yes, it was parked just as far over out of the street or that traffic as it would go, but pulled slightly into the ditch, but not enough, just——

Q. You mean it was two or three feet from your window?
[fol. 154] A. Yes, that is right.

Q. Now, was there any light out there in your yard?

A. Yes, sir, my trailer light was on out front.

Q. Your trailer light was on?

A. Yes, sir, also the factory light.

Q. Now, how close were you to these two girls that you name? Who were the girls now?

A. Florence Roberts and Hazel Kennedy.

Q. Florence Roberts and Hazel Kennedy. Now, how far were you from them?

A. Well, when they pulled directly behind her car which would make it only two or three feet from me and then they pulled over right even with the car in the street which is——

Q. You mean they were only two or three feet from you, about that far from you?

A. From the trailer, from the car which was parked in the street.

Q. I said from where you were.

A. I was in my trailer. The trailer has three rooms, a bedroom, kitchen and living room, and I was sleeping on the couch in the living room.

Q. Well, I am talking about from your two eyes to where the girls were, how far was that?

A. Oh, I judge it wouldn't be over three feet.

Q. A yard, three feet? You mean it would be about that far?

A. Well, if that is three feet.

[fol. 155] Q. Well, that is a yard. And you say you saw an ice pick in one of the girl's hand?

A. No, I didn't say that. I said they got out and punctured the tires and I called Mr. Brown, the police, and he determined it was an ice pick she used. I saw her stoop and do something to the tire which she punctured, and I

heard the pop of the tire and the tire was leaking air as Mr. Brown came over.

Q. Now, you were standing up at that time looking out of the window?

A. I was looking out the window, yes, sir.

Q. You don't definitely know just what it was now, who was that that you saw?

A. Florence Roberts and Hazel Kennedy. She is sitting back there.

Q. Oh, I mean which one had the instrument or the ice pick?

A. She did. Florence Roberts.

Q. Florence Roberts did?

A. Hazel was doing the driving.

Q. Now, that was actually before this picket line was put up the second time, wasn't it?

A. Well, it was the early part of the morning that the tent was put up before this second strike started.

Q. Well, I mean the picket line was resumed the next morning, wasn't it, after that?

[fol. 156] A. That's right, that morning you see.

Q. Monday morning?

A. Monday morning. This is the morning.

Q. And that was at 12:30 and the picket line was resumed sometime that same morning?

A. I come on duty about six o'clock. I believe I come on about six to fix their coffee and prepare their breakfast.

Q. Now, Mrs. Newby, don't you know that actually there are not even 37 people out on strike the second occasion? Don't you know that?

A. Well, when the strike started there was 37.

Q. And actually didn't some of those people go back to work though?

A. Not that I know of. I work there.

Q. You don't know any of them that went back to work?

A. No, I don't.

Q. Do you know any of them that moved out of town?

A. No, I don't.

Q. None of them went back to work who were out for a while?

A. None of them that I knew.

Q. Now, you said that this—these things that were said

to you, you say they didn't say very much to you? I mean it was generally to other people that they were——

A. Well, they called me enough. They called me a scab. Isn't that the lowest down name that you can be called? [fol. 157] He says he doesn't want to be called a scab. I think it is very insulting.

Q. And you are opposed to the Union, aren't you?

A. Oh, no, unh-hunh.

Q. You are not opposed to the Union?

A. No, sir.

Q. Well, why is the word scab so insulting to you?

A. Why do they want to insult us?

Q. It is the lowest thing that you could be called.

A. That is the way I think.

Q. Why do you have that attitude?

A. Well, because he read it in the dictionary what the word "scab" means. Isn't that the lowest thing that we can be called, the lowest thing that's picked for us besides other remarks that they made to us?

Q. Well, had you read the dictionary before these remarks were made to you?

A. Oh, I looked it up. Yes, I did.

Q. Did you look it up?

A. Yes, sir.

Q. You did look it up?

A. Yes, sir, I wanted to see what the word "scab" meant.

Q. Well, now you didn't stop going in the plant, did you?

A. No, sir, I went to work every day.

[fol. 158] Q. I see. And did it actually bother you for these people to be talking to you?

A. It certainly did when they would get——

Q. It bothered you?

A. Yes, sir, it made me very nervous and I told you I couldn't make my production and I am not over it yet. If you are threatened to be whipped, your trailer is threatened to be moved and your daughter, that is the first thing, has her tires punctured for no reason whatsoever, if they just have a grudge against you, wouldn't it upset you?

Q. You say you have not got the production back where it was before the strike?

A. No, sir, it hasn't.

Q. Has Mr. Bonady talked to you about that?

A. No, he didn't. He is very nice.

Q. Now, as a matter of fact, Mrs. Newby, didn't you sign an application card to join the Union?

A. Yes, I did.

Q. When was that?

A. Well, when they first began to organize it, but there was a number of others that time.

Q. Why did you sign the card?

A. Well, for the reason that, well, we were promised paid holidays, paid vacations. We were promised holidays. We were offered more money which I could use.

[fol. 159] Q. In other words you thought they needed a Union there at the plant?

A. Well, at the time I was confused on what the Union meant. I have never worked, in fact, I had never been in a factory when I entered Rainfair, and I had never worked. I didn't know what a Union meant. They came around and talked to me like others, why I signed the Union card.

Q. You mean they told you after you signed up and they got a Union there and bargained with the Company they could get you possibly an increase in wages and paid holidays?

A. That is right. We were promised that.

Q. And you think that those things were desirable, that you ought to have paid holidays and you felt that you weren't making enough money, is that right?

A. Well, at the time I told you I signed the Union card that is what I was for.

Q. I mean at that time?

A. Yes, at that time.

Q. At that time you felt like you weren't making enough money?

A. But now I am perfectly pleased.

Q. Well, now you feel like you are making enough money?

A. Yes, sir, I am proud to be making seventy-five cents an hour.

Q. You don't need a wage increase now?

A. I wouldn't have it, I wouldn't have it if they offered me, say, \$10 an hour and I needed it.

[fol. 160] Q. You say you do need it?

A. I need it, but I wouldn't belong to the Union to get it.

Q. You wouldn't belong to the Union to get it, but you would take it if the Company gave it to you?

A. I am pleased to work for seventy-five cents an hour. I am pleased to work the rest of my life for seventy-five cents an hour. It means something to me. It wouldn't mean anything to you, but it means to me a living, and I have a child to support and I am happy to work.

Q. You say you would be happy to work the rest of your life for seventy-five cents an hour?

A. I certainly would be happy to work the rest of my life for seventy-five cents an hour. I have worked on a farm and I have picked cotton and chopped cotton and I have done everything but making ties, if you know what making ties is.

Q. Have you read the paper a while ago setting the weight setting the minimum wage at a dollar an hour?

A. No, I don't. I can hardly read the paper.

Q. And if the Congress raises the minimum wage to a dollar an hour, would you be pleased with that?

A. No, I wouldn't want it.

Q. You wouldn't want it?

A. I am pleased with my job just like I am.

Q. You mean you would turn it back to Mr. Bonady?

A. That is right. If we are pleased to work for seventy-five cents an hour and can work, I would be pleased to do [fol. 161] their work.

Q. You just want to work for seventy-five cents an hour for the rest of your life?

A. That is right. I work for seventy-five cents an hour and I am glad to. All I want to do is do my job and take care of my children, and I am very glad of the opportunity to work as long as I can and keep up my production.

Q. Did they mention at the time that the Union was trying to persuade you to join, as one of the arguments, did they mention to you what the employees of this company were making at Racine?

A. Oh, yes.

Q. What did they tell you about that?

A. Well, the Union lady that came into the factory said, "You know what they are making at Racine, Wisconsin?" And I said, "No, how much?" I believe she said \$1.75 an hour, and I stated to her the same thing I am stating here that I was pleased with my job and I would be pleased to

work the rest of my life for seventy-five cents an hour, but what they make, and I am proud they make it, and I don't want it.

Q. Did they say they were getting paid holidays up there at Racine?

A. Now, I didn't go into that. She just came around and asked us how we liked our job and was we pleased with ours and our pay and I said I was and she said, "How can they [fol. 162] stand working here like that and with the conditions of the factory?"

Q. Well, in other words, you think that the people up in Racine ought to make twice as much money as the people here in Arkansas? You think that is treating our people right?

A. Now, if they are willing to work for their pay, let them work. That is their business and that is mine—strictly that I work for seventy-five cents an hour.

Mr. Woods: I see. I believe that is all.

Redirect examination.

By Mr. Shaver:

Q. I believe you said that you to start with you signed a card?

A. Yes, I did.

Q. And what did—what promises did they make to you if you signed a card?

A. Well, they promised us higher wages and they promised us paid vacations and holidays off and things of that sort.

Q. Did they criticize the plant down here about the way it was run and wasn't treating you right?

A. Well, they said we were very ignorant for working for seventy-five cents an hour and they got higher wages elsewhere and the lady came out from Racine and said, "Do you know what they are working for up there?" And she stated the price and I said, "That is O. K. with me. I am [fol. 163] working for seventy-five cents an hour and proud to get it."

Mr. Shaver: I believe that is all.

Mr. Woods: Just one more. I believe I have another question.

Recross examination.

By Mr. Woods:

Q. Now, when did you say that, in answer to Mr. Shaver's question, when did you say they promised you these things? Are you talking about the other people there in the plant or are you talking about these Amalgamated Clothing Workers?

A. Yes, I am talking, I am referring to the lady sitting over here. She is the one that came and visited my trailer and said—

Q. What is her name? Who are you pointing to?

A. Well, the sort of gray-haired lady sitting here, Ruth.

Q. Miss Kinney?

A. Well, the lady sitting here, the one with the black dress on.

Q. Who is that, Miss Kinney?

Mr. Shaver: She is identified as Miss Ruth Kinney, is that right?

The Witness: Uh-huh.

Mr. Shaver: Will you agree that she is identified as Ruth Kinney?

[fol. 164] Mr. Woods: Yes.

Mr. Shaver: Mr. Stenographer, Mr. Woods agrees to that.

Mr. Woods: I believe that is all.

Mr. Shaver: That is all.

The Court: That is all. You are excused. Call your next witness.

(Witness excused.)

Mr. Shaver: I want to call Mr. Brown.

Thereupon, ELMER BROWN, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. Your name is Elmer Brown?

A. That is right, yes, sir.

Q. How old are you, Mr. Brown?

A. Forty-seven.

Q. And where do you live?

A. I live here in Wynne, 217 Mulberry.

Q. And what do you do?

A. I am a Police, City Policeman.

Q. City Policeman?

A. Yes, sir.

Q. How long have you been?

[Vol. 165] A. I have been here on this job about two and a half years.

Q. Sometime early Monday morning on June 20th., 1955, did you receive a telephone call from anybody to come to the plant?

A. Yes, sir, I did.

Q. Who did you receive that call from?

A. Charles, whatever his name is, it come from his residence.

Q. Charles Gossett?

A. Gossett, yes, sir, that is right.

Q. Now, can you tell us who Charles Gossett is?

A. Well, sir, he works down at the plant. I don't personally know the fellow.

Q. And what fact was communicated to you?

A. Well, he said somebody had punctured some tires there and wanted me to come down and investigate it.

Q. About what time was that?

A. I received the call around 12:35 and it was about 12:45 when I checked my watch down there at the automobile.

Q. Did you go down there?

A. Yes, sir, I went down there.

Q. Now, you are talking about 12:45?

A. 12:45, when I—

Q. Monday morning?

A. Monday morning, yes, sir.

Q. And who was there?

A. Well, when I arrived there wasn't no one there. Mrs. [fol. 166] Newby and her daughter and Charles drove up just a few minutes after I arrived there and that is when I checked my watch. It was 12:45. I put it down on a little book where we always keep such as that down.

Q. Did you check the tires?

A. Yes, sir, I checked them.

Q. What did you find?

A. I found the front left and rear left had been punctured by some sharp object that resembled an ice pick the best I could tell. It was just a small round hole and the air was still spewing out of both tires.

Q. All right. Then what else did you do, if anything?

A. Well, at the time I just checked the tires and I come on back up to the City Hall and told her I would have the Chief down the next morning to look at it, not to move the car, to let him see it.

Q. Now, did you get another call from down there?

A. Yes, sir, I got another call about 5:15 the same morning.

Q. Now, who did you get that call from?

A. From Charles, the same fellow.

Q. And did you go down there?

A. Yes, sir, I went down there.

Q. And where did you go then?

A. I went inside the plant that time.

Q. Just tell the Court what you found inside the plant. [fol. 167] A. Well, I found a window busted out, glass laying in the floor and a snake about five feet long, a black snake lying there coiled up by the wall.

Q. And how close was the black snake to where the window glass was broken out?

A. He was lying right under the window and the glass was laying over on the other opposite side of him.

Q. And what time did you say that was in the morning?

A. That was 12:15. I mean that morning, 5:15 that mornin'.

Q. 5:15 that morning?

A. Yes, sir.

Q. And who was down there with you at the time?

A. Charles.

Q. Charles was?

A. Yes, sir, he was there.

Q. What did you—how big a snake was this?

A. He was about between four and five feet long, I imagine. He was a pretty long snake.

Q. What did you do with that snake?

A. Well, I caught him and put him in a box for them.

Q. Well, how did you catch him?

A. I put a broom handle on his head and caught him by the nape of the neck, and put him in a box.

Q. And what happened to the snake?

A. Charles took him in the office. I don't know what he [fol. 168] done with it. I haven't seen the snake.

Q. Now, Mr. Brown, are you the night watchman here, City man?

A. Yes, sir, that is right.

Q. Have you been going back and forth down there to observe what's going on?

A. Well, of a night I make rounds by there.

Q. Well, I mean any time during the day time?

A. I haven't been down there but one time. That was the day of the second strike. I went that evening to pick my wife up and that is the last time I was there.

Q. Your wife work down there?

A. Yes, sir, she works there.

Mr. Shaver: I believe that is all.

Cross Examination.

By Mr. Woods:

Q. Mr. Brown, have you ever seen any of the strikers around there at night or do they generally leave after the—

A. No, sir, I haven't seen none there.

Q. You haven't seen none there?

A. No, sir.

Mr. Woods: I believe that is all.

The Court: Anything further from this witness?

Mr. Shaver: No, no further from him.

(Witness excused.)

The Court: Call your next witness.

Mr. Shaver: Mr. Pete Bonady.

[fol. 169]. Thereupon, PETER A. BONADY, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

~~Direct~~ Examination.

By Mr. Shaver:

Q. What is your name?

A. Peter A. Bonady.

Q. How old are you, Mr. Bonady?

A. I am forty-eight.

Q. And where do you live?

A. I live at 505 East Jackson.

Q. In Wynne, Arkansas?

A. In Wynne, Arkansas.

Q. How long have you lived in Wynne, Arkansas?

A. Since October of 1954.

Q. And what is your occupation?

A. I am manager of the Rainfair plant at Wynne.

Q. And how long have you been manager at the Rainfair plant at Wynne?

A. Since October, 1954.

Q. State whether or not you received a telegram from the Amalgamated Clothing Workers of America, CIO, on Monday, June 20th, advising you that they were going back [fol. 170] on the picket line.

A. I received a wire.

Q. About what time did you receive it?

A. About ten o'clock in the morning.

Q. Do you know what time they set the picket line up?

A. I believe they were there at six o'clock in the morning or shortly thereafter.

Q. Now, will you describe your plant? In other words, maybe I can help you here if Mr. Henry will let me lead you here to get through quick.

The Court: He ought not to object.

Mr. Woods: You go ahead.

By Mr. Shaver:

Q. All right. I believe your plant fronts on Rowena Street?

A. Yes, it does.

Q. And it also is on Martin Drive which runs east and west?

A. That is correct.

Q. Rowena Street runs north and south?

A. That is correct.

Q. Now, from the concrete walk that leads from Rowena Street up to your main door, how far would you say that was?

A. I would say that would be thirty-five or forty feet.

Q. Now, how wide is the surfaced part of Rowena Street that runs in front of your plant, that is, where automobiles can drive?

[fol. 171] A. Eighteen feet.

Q. Did you measure it at noon?

A. Yes, sir, we measured it.

Q. Now, when people come to and from your plant, and by that I mean employees, how do most of them come?

A. Most of them drive or ride with other drivers.

Q. Is there a place on the east side of your building and between your building and between your building and Rowena Street for employees' automobiles to park?

A. Yes.

Q. Is that true also on Martin Drive?

A. Yes, sir.

Q. If an employee drove his car up to your plant and was coming, going south on Rowena Street, how would he park his car with reference to facing the East side of your building ordinarily?

A. If he was coming from the south, you say?

Q. I meant coming from the north going south or either way, how do they park out there?

A. They head into our building that fronts on Rowena.

Q. They head into your building off of Rowena?

A. That is right.

Q. Which leaves the back part of the car facing towards Rowena Street?

A. That is right.

Q. Now, can two cars head into the building, that is, one [fol. 172] behind the other?

A. I think they could, but the rear of the back car would probably be in the ditch or close to the road.

Q. Now, when—how many employees do you have out there now?

A. Approximately 90.

Q. And how many automobiles do you ordinarily—do you know that drive up there and leave and go to lunch and return? Do you have many automobiles?

A. I would have to guess. I don't know. It could be thirty. It could be forty and it could be twenty-five. I have never counted them, but the front part of our lot is pretty well filled and then they are also parked on the Martin Drive side.

Q. Now, when you start driving out of them about—getting out of there, how did you have to get out of there if you head in?

A. I have to back out.

Q. On what street?

A. Oh, you can park out on Rowena.

Q. All right. If cars are parked on Rowena Street, can that be done?

A. Well, it will take a little maneuvering. It possibly could be done, but it would—you would have to jockey that car quite a bit.

Q. Now, as you would come and go to your work, would [fol. 173] you tell the Court what the picket line did to you? In other words, what remarks did they say to you?

A. Well, they ridiculed me more than anything else, and the fact that I don't have too much hair and so in one of their parodies they sang the song of Luky Dinky Parley Vows and they would say, "Pete's hair is turning gray," and then the chorus would say, "What hair?" And then they would go on and, of course, they sang the song, "Well, if the Boss gets in the way, they are going to Roll Him Over," and they sang the one about Davy Crockett, but I couldn't get all the words on that one, but it was nothing very flattering I assure you.

Q. Well, now, would they jeer at you and holler at you as you would go to and from the plant?

A. Every time.

Q. And what did they say to you?

A. Well, I think they were a little kinder to me than they were the girls. They never called me a scab, but they called me a slave-driver, but they accused me of using a whip whipping the girls in and out of work. That is about the extent of it.

Q. Now, did you take some pictures showing the tent directly across from your property?

A. I did.

Q. Is that one of the pictures that you took?

A. Yes, sir.

Q. Now was that tent located there Monday morning?

[fol. 174] A. No, sir.

Q. Where was the tent Monday morning?

A. I don't remember seeing a tent Monday morning.

Q. Well, Monday afternoon.

A. When that tent was set up, I believe it was set up over to the left out there.

Q. Close to Mr. Hamrick?

A. Yes, sir.

Q. Would you tell the Court what went on around that tent when it was first set up and how many people congregated there and what they did?

A. I would say that at various times they would congregate there, there would be as many as twenty-five or thirty and as few as eight or nine. It was the focal point of all this picketing and the headquarters for the concerted action of either singing, jeering or name calling or everything else took place over here. The reason for congregating there, I imagine that was their headquarters. I think they ate there. They developed what strategy they had. They drank, conducted what business I imagine they did from there.

Q. Now, did you observe the manner in which they acted from this tent headquarters as workers would go to and from work?

A. Well, when our workers went and came, went and came to work, this group didn't stay around the tent. They came up on the road. They came to the extreme edge of

their—of their rented property and they walked up and [fol. 175] down in the road. They didn't congregate at one particular place. They were in closer proximity to our plant when our people left or came to work.

Q. Well, now from the east side of Rowena Street where they came, how far was it from your property from the west side of—how far was it from Rowena Street to where they stood from your property?

A. Well, they stood in the road at times right up to our walk.

Q. Well, now these automobiles had to back out of there, didn't they?

A. Approximately all of our cars backed up.

Q. Did you have any trouble in going to and from?

A. Well, I tell you my own trouble. On various times and I don't always have my car there, we have but one car. My wife uses it as much as I do, but when I had the car there & parked closer to the front office door and when I back out I am careful to see that any—if any of these pickets are in the way so I can swing my car out. Often times when I back my car out the pickets will be walking in that direction. They would come right up to the edge of my right fender. Now, I can't back my car on to Rowena and swing right out. I have got to jockey my car and if they stand right there I can't make a right hand turn until they decide to move. Now, I believe I was as careful as I could be and I don't [fol. 176] think I touched any of them, but it would have been a very simple matter for somebody to get hurt because they would walk up there and stand there and ask to be hurt. They could see me. They could see me driving out, backing out to swing my car to drive and they would come that close. Now, it isn't easy to drive into that eight foot road and back out and get into that road. I can't because I have a ditch opposite.

Q. Now, did you observe for the length of time that that picket line was up how this group of people acted towards the employees and what they said and jeered at them, what they said as they would come and go? Did you hear it and see it?

A. I was there practically every day and I saw it and heard it.

Q. All right. Now, tell the court what you saw and heard.

A. Well, on this Monday morning, June 20th, I had observed this going on previous to the resumption of this fracas there, and I had—I just couldn't help but feel that there was something in the air, that these girls had never acted that bad before. They ran and screamed up and down that front on Rowena. During working hours they went along on the Martin Drive side going up and down whistling shrilly, sitting in the road, making faces at our employees because I don't think that they could hear if they were talking. We couldn't hear them because of so many of the machine motors that we have running inside [fol. 177] the plant, and that would continue sometimes for an hour, and then they would stop and go back into their headquarters or assembling place and maybe a half an hour later they would start in again. Now, I have business to conduct in and outside the plant and at any time that I walked in that plant, not only at seven o'clock in the morning or twelve o'clock noon, if I had to leave, well, that was just like lighting a firecracker. Here they went and you could hear that noise probably for blocks. What they screamed, I don't know. I got so hardened to it that I didn't pay any attention to it, but that was just a signal the minute they saw me and normally I go to lunch at twelve o'clock and if I want to stay there until 12:30 or 1:00 or 1:30 and not go to lunch at all, that is my business, but at any time that I didn't go to lunch at twelve o'clock, at 12:30 or 12:45 or 1:00 o'clock, that again, for some reason or another, that aroused them and they wanted to know some explanation from me why I didn't go to lunch at twelve o'clock, and if I was afraid something would happen to me or something else and that happened to me all of the time and plus the fact I have business downtown. I have to go to the postoffice or to the bank or make personal calls to somebody, invariably I had somebody following me from the plant in an automobile. If I had to go to the bank I had somebody to see that I got to the bank. I had an escort and if I went to the postoffice I had somebody to follow me there, [fol. 178] and if I went home to lunch, they would be sure to follow me home to see that I got there and back. They always followed me with an escort and they didn't restrict it to that. They came by at night time to my house. Some-

times they would come at 1:30 in the morning coming by my home hollering Peter Rabbitt and tooting horns.

Q. How about telephone calls at your home?

A. Well, it got so bad at our place that we had to disconnect the telephone when we went to bed, especially on Monday the 20th and the 21st. They would start at 9:00 o'clock and we would get phone calls, anonymous phone calls. Sometimes they would talk and sometimes they would say nothing and this did continue on until twenty minutes to one on the 20th. I finally had to call the Chief Operator. We had children there at our home and we had to disconnect the telephone and we would connect it again at six o'clock in the morning, and on Tuesday we had the same thing happen except that we asked the police to disconnect it about eleven when we went to bed and we have continued to do that until this injunction was filed, and we haven't been bothered by phone calls since.

Q. Now, do you know who made the phone calls?

A. I asked the Chief Operator to tell me what telephone number that was and the two they gave me unfortunately were both party lines. One number was 770 and there were [fol. 179] eight telephone connections to it and the other one was 502 at Vann Dale and there were various telephones connected with that, person after person, that nothing came from any one of those except that was the number they came from.

Q. Now, Mr. Bonady, will you explain to the Court what the activities were along the east side of Rowena when the employees would go and come and what was hollered and said to them?

A. That is facing the building?

Q. Facing the building.

A. Facing the building. That is the only exit we have there and at one time for people going out or coming in in the morning and when they would leave at noon, and all of our employees wouldn't go out at lunch. Some of them stayed right there. Some sit outside. Some eat lunch in their cars, but those that left, from the time that our buzzer sounds signalling 12:00 o'clock, why these people would line up. The strikers would line up on the road. They would line up on their own land, and that is when they would start

jeering and calling these names at our girls. This would continue until pretty near all of the girls were gone or settled, and then it would be resumed again about twenty-five minutes after twelve. We are on the Summer schedule. We start at 12:30 and then they would pick up again at 3:30 when our people left.

[fol. 180] Q. Now, what effect did this conduct have on your business and the attitude and minds of the women employees in your plant?

A. Well, it hasn't been of the best. Our production hasn't been up to what it was when this strike started. The girls are extremely nervous. They are frightened that some bodily injury could take place, plus the fact that they are under this constant barrage of name calling and they are extremely nervous.

Q. After this injunction was issued there on I believe Wednesday morning, were you called to the plant down there about certain glasses being thrown out there in the street where you park your car?

A. About a quarter of seven I was called. I was called to the plant that glasses had been str~~own~~ there, so I left immediately and got there in a concentrated area where I usually park my car and in the road itself there were smashed jars, Coca Cola bottles, milk bottles, possibly other kinds of bottles in this Company parking area and in the road.

Q. Do you have that glass with you?

A. I do.

Q. Where is it?

A. It is in this hall there.

Q. Would you get it for me?

Mr. Woods: Your Honor, I would just like to raise this one point with reference to—I mean this occurred as I un-
[fol. 181] derstand it after the presentation happened on this temporary restraining order.

Mr. Shaver: It happened during the restraining order.

Mr. Woods: After the restraining order was issued?

Mr. Shaver: That is right.

Mr. Woods: I understand you are charging somebody with violating the restraining order?

Mr. Shaver: No, no, I just wanted to show a pattern of what's happening now.

Mr. Woods: Now, this all occurred, Your Honor, as I understand it after the restraining order was issued. I don't believe we can go into anything—

Mr. Shaver: I just wanted to show that I anticipate their argument and I want to show the pattern that's going on down there.

The Court: Can you prove that some of them has done that?

Mr. Shaver: No, sir.

The Court: I think if you can that somebody has been in contempt probably.

Mr. Shaver: No, sir, all I can prove is that this glass, all of this glass here was found in the road and up where Mr. Bonady parks his car after the restraining order was issued.

Mr. Woods: Well, of course, this would—that would bear on a citation for contempt which is in the nature of a [fol. 182] criminal charge. I don't think our people did it, but if they did, they should be specifically cited and should have an opportunity to defend themselves.

Mr. Shaver: I can't do it, Your Honor.

The Court: That is what I am trying to find out now. I think somebody would be, if you can tie them into that.

Mr. Shaver: No, sir, I cannot. All I can prove is that he was called down there and that glass was picked up down there and Mr. Brown and Mr. Bonady, Mr. Hamrick helped pick it up.

The Witness: Jack Cobb.

Mr. Shaver: Who?

The Witness: It was Jack Cobb.

Mr. Woods: That would certainly be a violation of your order and we have instructed these people to carefully obey every word of your order, Your Honor.

Mr. Shaver: Now, Your Honor, the inference, the inference from this is that although they instructed them they didn't comply with their instructions.

The Court: Yes, sir, I know. Yes, sir, well, I am satisfied that they haven't done a lot of things that your proof will probably show, but this is on a temporary restraining

order and I suppose should be confined to that, so we won't [fol. 183] go into that at this time.

Mr. Shaver: I believe that is all.

Cross-examination.

By Mr. Woods:

Q. Mr. Bonady, how long did you say you had been with Rainfair or did you say?

A. I wasn't asked the question.

Q. How long have you been?

A. I was asked——

Q. How long have you been with Rainfair?

A. I will start my thirty-first year the day after Labor Day, 1955.

Q. And practically your whole career with the Company has been at Racine? Has your career with the Company all been at Racine?

A. Yes.

Q. Up until the time that you came down here?

A. Yes.

Q. Is that the only plant they have other than the Wynne plant, the Racine plant?

A. Uh-huh.

Q. Have you always been in a supervisory capacity with the Company since the Union has been in the Company at Racine?

A. Yes, if you define supervisory as what, the foreman of a department?

[fol. 184] Q. That is right, a part of management. Now, you have the International Ladies Garment Workers Union, AFL, at Racine, is that right?

A. Uh-huh.

The Court: Will you answer, Mr. Bonady, so the Court Reporter can get it.

By Mr. Woods:

Q. Were you ever a member of a Union yourself?

A. No, sir.

Q. How long has the ILGWA been in the plant at Racine, do you know?

A. I believe they were organized in 1934.

Q. Now, have you ever had any strikes up there?

A. In 1934 we had a strike.

Q. Is that the only one you have had?

A. The only one that I know of. They may have had one previous to 1934, I don't know.

Q. I see.

A. There may have been.

Q. But during the time that you were with the Company up there, they have just had the one strike in 1934?

A. Yes, sir.

Q. And at that time the I.L.G.W.A. organized the company?

A. Yes.

Q. And have they had a contract with your company since that time?

[fol. 185] A. Yes.

Q. How have relations been with the Union up there?

A. We think they have been very good.

Q. Did you ever have any trouble with the Union up there yourself?

A. How do you mean?

Q. Well, did you ever have any disputes or arguments or disagreements?

A. Well, I was in the negotiations, if that is a dispute, if that is what you mean by disputes.

Q. Well, now you at one time were—now, were you at Staten, Wisconsin? Were you in that plant?

A. I was in charge of that operation there.

Q. And didn't they have a strike over there?

A. Not to my knowledge.

Q. Not to your knowledge. You don't know of their ever having struck over there?

A. I think I can say that there's never been a strike there.

Q. You said the relations up there with the Union have been reasonably good?

A. I would say so.

Q. And as a matter of fact, didn't they have a kind of a Civic function or joint function at which the Civic leaders all attended kind of a love feast between the Union and management people up there at Racine here a short time

ago and talk about the peaceful relations, good relations [fol. 186] which had existed between the Company and the Union up there?

A. I am sure I don't know. I haven't been there since October.

Q. I see. You don't know anything about that?

A. I don't know of any particular—

Mr. Shaver: Your Honor, I don't know what this has got to do with whether there's violence on the picket line.

Mr. Woods: Well, I just wanted to show the different attitude the Company has there and down here is all.

The Court: I don't see that it has any bearing on this hearing today.

Mr. Woods: Well, we will move on from that, Your Honor.

The Court: I don't see that there is any objections or benefit here in this hearing.

By Mr. Woods:

Q. How many employees did you say you have, about ninety?

A. Approximately ninety. I could be off one or two.

Q. Now, how many of them went out on strike the first time?

A. Twenty-nine.

Q. Now, have any of them returned, the twenty-nine?

A. Well, of the twenty-nine, you are going back to when they went on strike the first time?

Q. That is right, the first time.

A. Twenty-nine walked out on a Monday morning, or didn't show up for work, I may say, and in the next day [fol. 187] or so, three returned and left twenty-six that never came back.

Q. There are twenty-six out now of the original group who went out? There are twenty-six out now?

A. I believe that is right. I could be off one, one either way.

Q. And twenty-six is the most that have ever been out on the second time? Did any others come out and join them?

A. Not to my knowledge.

Q. I see. Now, have you replaced any of these people, Mr. Bonday?

A. We have hired other people.

Q. You have hired other people and now how does your working force in numbers compare now with the working force which you had at the time the strike first started?

A. I believe we had 107 on May 2nd. I think that is when they—when the first group walked out, and we have about ninety now, eighty-five or ninety, somewhere in there.

Q. You have about eighty-five or ninety now. Now, as far as your production is concerned, how seriously, that is percentage wise, has your production been curtailed by this strike?

A. I don't think that I can answer that question.

Q. Well I think you should answer it. You are claiming here in your petition that you are suffering irreparable damages, and I want to find out how much you are being damaged.

A. You mean percentagewise?

Q. Percentagewise.

[fol. 188] A. Dollarswise.

Q. Well, just answer it both ways, percentagewise or dollarwise.

A. Well, the reason I say I can't answer that question is because we had some more trainee people in there, plus the fact that our shop has not been balanced because of people that have walked out. We have had to switch some people over on other jobs or we coupled some jobs together. In units I can tell you. I think that will give you the answer.

Q. All right. That will give us a pretty good idea, the unit production.

A. The units, the units in May or the last week in April I think we were turning out around thirty-five hundred and today we are turning out around twenty-five hundred.

Q. Twenty-five hundred.

A. I am talking about the individual pieces, not dozens.

Q. I see. Well, that gives us a pretty good idea. Now, on these new trainees that you mentioned, are they people that are replacing the strikers? You say that that's cur-

tailed your production having these new trainees in there.

A. Re-ask that question.

Q. These new trainees which you have mentioned. You said your production was curtailed because you had new trainees in the plant. Now, are those new trainees replacing the strikers?

A. Are they replacing the strikers?

Q. Yes.

[fol. 189] They are people that we hired because we have work for them.

Q. They were people that you hired after the strike to take up the slack?

A. May be I could explain it to you.

Q. Well, all right, sir. Go ahead.

A. But it would be getting away from your question. We were notified, I believe, on May 2nd that this strike was called and the telegram was delivered to me possibly signed by Mr. Lampert, I am not sure, that this strike was called. We had no indication of any kind whatsoever that those people were going to go out on strike, so I wrote these twenty-nine people that didn't come to work that day a letter and told them that I didn't know why they were out, but if they didn't return to work in three days or four days, I believe it was, we could assume only one thing, that they were separating themselves from our employment, in other words, that they were quitting. These letters were sent out registered mail and they were all signed for. I waited that full week and on the following Monday I started employing some people and I put thirteen people back. I employed, I started thirteen people in the next, oh, say seven or eight days, seven I think it was.

Q. These thirteen new people?

A. In that period of time I put on thirteen new people.
Yes.

Q. I see. Now, have you put on anyone else since those thirteen?

A. I put on a janitor or porter who hadn't come into work.

[fol. 190] Mr. Shaver: Now, Your Honor, I don't know whether—what that has got to do with whether this is peaceful picketing or not.

The Court: No, sir, I don't either.

Mr. Shaver: I want to object to this line of testimony.

The Court: Let him proceed.

By Mr. Woods:

Q. Now, Mr. Bonady, you say you didn't know why they went out on strike. You knew that the Union was engaged in an organizing campaign there in your plant, didn't you?

A. Yes, sir.

Q. And you knew that they had a number of people had signed application cards, didn't you?

A. I was led to believe that.

Q. Did anyone come and talk to you about the application cards and ask you to recognize the Union or discuss it with you in any way? Did any of the Amalgamated people?

A. Yes.

Q. Who talked to you?

A. Youngdahl and Chandler.

Q. Was that before the strike?

A. Yes.

Q. And what did they tell you, Mr. Bonady?

A. I believe they said that they had eighty signature cards and they wanted to negotiate a contract.

[fol. 191] Q. And did they ask you to recognize their Union and bargain with them, with the Amalgamated?

A. I imagine they might have. I don't remember their exact words.

Q. Did they say anything to you about wages at that time?

A. No.

Q. Or working conditions?

A. In fact, what they did say about wages that they weren't interested in any more wages. They said they were—

Q. You mean as of that time.

A. I believe I could almost quote Mr. Youngdahl the morning he came in there and he sat down and I think he repeated this about three times, that the Amalgamated was

a nice Union. They were nice people and they had heard that we were nice people and wages weren't of too much concern, and they just wanted to negotiate a contract.

Q. They wanted you to recognize the Union and negotiate with them, negotiate a contract with them?

A. That is right.

Q. That is what it came down to. Now, did these remarks that were made at you, Mr. Bonady, bother you any? Did they cause you any serious concern, the remarks made at you?

A. Well, they concerned me to the degree that if they could have been left at the plant I don't think they would have bothered me so much, but when they got to following me, following me home, driving past my house, I just didn't want anything to happen to my family, and I don't want [fol. 192] anything to happen to my family. The concern that was caused me was the concern—was my concern at home and my family's concern.

Q. Well, did you recognize any of the people that followed you?

A. Yes, Florence Roberts has followed me on any number of occasions. Mildred Becker has followed me. Birdie McClintock has followed me. In fact, she followed me—in fact, she's very persistent. One day I had to go to the post-office. I had some business and she followed behind me all the way to the postoffice, and in the process of finding a place to park, she followed me around and, in fact, she followed me twice to be sure she wasn't going to miss me coming around and then followed me home. Pauline Waldrop on occasion has followed me. Those I could recognize.

Q. Well, now at the time they followed you, did they molest you or say anything to you other than following you? Did they do anything else?

A. Took the horn, stick close behind me, following me every direction I go. It's irritating.

Q. Now, you testified that over at the tent that day and I believe you said drank over there. You mean they drank Cokes over there? You didn't mean that they drank any intoxicants over there, did you?

A. I mean they drank liquids. I didn't know if they were intoxicating or not. I mean I could recognize —

[fol. 193] Q. Well, I just wanted to clear that up. You didn't mean to say that they ever drank liquor over there?

A. No.

Q. I just wanted to get the record straight on that. Now, you say they came up to the edge of the property on occasions. Did they ever come over on to your property?

A. Well, they came close, flirt with the men, you see. They came over on our walk would be our property when they did that and it was as long as over there from me, one on each side. If that was being on my property, then they would be on our property. Otherwise——

Q. Is that a walk that goes——

A. It is a walk that goes from the road to the door.

Q. To your door. You said sometimes when you would back the car out you were afraid of hitting somebody?

A. Oh, I said they wouldn't be directly behind my automobile when I backed up, so if that was the case I would hit them, so I would make sure they would be behind me when I would back up. When I back up I can't go directly straight out, and that is when they come up there, stand directly behind my car, unless they got out of the way without injuring somebody.

Q. Well, would that be the picket sometimes with a sign?

A. Well, it would always be a picket if they were walking up and down the road. I could assume they were doing nothing but picketing.

[fol. 194] Q. How many pickets did they have walking up and down with a sign, walking up and down normally? Now, when you refer to pickets you are referring to all the people over on that property?

A. I am talking about anybody noise making is a picket. Anybody walking back and forth on our road.

Q. Don't you know, Mr. Bonady? I mean you have had experience with labor Unions. Don't you know that picket refers to a man who is walking back and forth in front of a plant carrying a sign? Isn't that the generally accepted term of picket?

A. It could be. I don't know.

Q. Well, how many people walk up and down in front of the plant with a sign?

A. They would walk in pairs usually.

Q. You would be——

A. You mean how many at one time?

Q. I mean at one time.

A. Or how many at various times?

Q. You said they would be walking in pairs. You mean there would be one walking up and down Rowena Street and one walking up and down Martin?

A. No, usually the picket, there would be somebody walking alongside of him, and sometimes Chandler would walk alongside of him, and when Chandler would get tired, why then one of the girls would walk alongside one of these what you call pickets carrying the pole.

[fol. 195] Q. In other words, there would be, according to your testimony, there would be two pickets on each street? There would be four pickets, four people walking up and down with the sign, let's see, one by the side of the individual carrying the sign. That's two on Rowena Street, two on Martin Drive. That would be four of them in all?

A. Well, at times I have observed them with three pickets, with three signs and an escort of two, so there would be six carrying signs.

Q. Well, actually weren't they the only ones out in the Street at any one time?

A. No, sir.

Q. Well, didn't they, the others who were not actually walking the picket, didn't they, the great majority of the time, remain on their own property, on their leased property?

A. Well, sir, the only time I could observe them is when I would come to the front entrance of our door which was directly opposite their tent, and for me to go to my office from the plant, from the factory site proper, I would have to walk directly through this door that would face—facing your tent and then turn left into my office, and everytime that I came there they could observe and see me and that was the signal for them to come out in the road and stand as close to the—to our walk and hoot and jeer at me so they weren't—for the times that I saw them, they weren't all—[fol. 196] ways congregated under the fence, under their tent, because when they did see me they would come out.

Q. Mr. Bonady, did you seem to be the particular object

of their talking and singing and so forth? Did you seem to attract it more than anyone else?

A. Well, I think that they probably ridiculed me as much as any of them because they felt if they could ridicule and make fun of the Boss, why that was a little—left quite a bit of prestige, but when our girls came in and went out they were the—they were the ones that they were concentrating on the girls. They were the ones that took the vindictiveness, the meanness, the jeering, the nasty names.

Q. Now, Mr. Bonady, when the picket was thrown up the second time, do you know of any actual incidents of violence that have occurred out there in connection with the picket line?

A. You're talking about physical violence? Is that what you call violence?

Q. Yes, physical violence.

A. I have never observed anybody.

Q. You have never observed any physical violence? It's all been of an oral nature?

A. Sir?

Q. I mean there has been some talking back and forth. Everything has been oral and nothing has been physical? Is that what you are saying? There hasn't been anything [fol. 197] physical?

A. I just said that I haven't observed any physical violence.

Q. I see. Mr. Bonady, you have testified that your production was down about thirty five hundred and twenty-five hundred units. Under those circumstances, when these people reapplied for work out there, why didn't you rehire them?

Mr. Shaver: Now, I object to that, Your Honor. That hasn't got anything to do with it.

The Court: No, I think not.

Mr. Shaver: Sir?

The Court: I don't think that has anything to do with this.

Mr. Shaver: There is a question of violence. They are making a motion to dissolve a temporary injunction.

The Court: On what theory would that have to do with this?

Mr. Woods: Well, he is alleging that this is causing him irreparable damage. I presume that his production is being seriously affected and we intended to show that by him, that if he hired some of these people back that they are good operators, a number of them, and they have reapplied for their jobs that he wouldn't have a question of production—he wouldn't have a question of production.

The Court: You might ask him if some of them have [fol. 198] applied and he has turned them down. I guess he would be permitted to answer that.

By Mr. Woods:

Q. Would you answer that question? Did some of them apply and you turned them down?

A. I believe all of them have filled out an application to go to work.

Q. But more of them have been rehired?

A. Just one.

Mr. Woods: Just one, all right.

The Witness: Your Honor, can I clear up a point?

The Court: I guess so. Go ahead, Mr. Bonady.

The Witness: The Counsel said that I made a statement that we have suffered irreparable damage. The question as I answered it over there, he wanted to know what our production was today, as it was several months ago, and that can be for any number of reasons. He has been trying to bring up why we wouldn't rehire our people. That is purely an economic question and our own personal business.

The Court: Yes, sir.

By Mr. Woods:

Q. Did you tell them that you couldn't use them because it was a slack season?

A. I told them at that time that we had no use for any more employees. We didn't need any employees at that [fol. 199] time.

Redirect Examination.

By Mr. Shaver:

Q. Mr. Bonady, they have been asking you about what you did back on the other strike. In order to show a pattern here, did anybody threaten you during the first strike?

A. Well, Miss Hazel Kennedy told me one day across the line that she was going to wipe the sidewalk with me and send me back to Wisconsin because I was nothing but trash. Now, I don't know if you construe that as a threat. Personally, I don't think she's big enough to do it unless she was going to have an awful lot of help, but that is the statement she made to me. That was made directly to me across the line.

Q. Now, would you tell, as you sat there and observed these people from the opposite side of the street there, would you just tell the Court what the words were that you heard that they were throwing at your employees that come and go? What are some of the things they called them?

A. Well, they called them slaves. They called them cotton picking fools. They called them scabs of any kind, all nature of scabs, dirty scabs, pony-tailed scabs, fat scabs, crazy scabs. They would make remarks about raising rocks in the yard and finding frogs and disagreeable looking animals that were much finer than the appearance of the people going into our shop. That is about the gist of all they [fol. 200] called our girls.

Q. Now, was that done en masse, in unison as they would go and come?

A. I don't quite follow your question.

Q. I mean was that a group of people doing that jeering and hollering?

A. It was in groups. It was individually. It was in couples. It was in dozens and when it go to be more than that you couldn't understand it because it was just bedlam.

Q. Now, what atmosphere did that create out there with reference to the imminence of breach of peace and disorder?

A. Well, I believe and I felt it myself that it wouldn't have taken much to have touched something off and there would have been physical violence there. The girls were extremely nervous. They were afraid they were going to

be molested going and coming from work, whether something would happen at their homes. They were nervous in their work.

Q. Now, did you call the police to come down there?

A. I called the police immediately that this trouble started.

Q. And did you have the police on hand at all times?

A. I believe that the police department was there. At least if they hadn't been—if they weren't there 100% of the time it was because some emergency came up somewhere else.

Q. Now, during the last picket did you find a lot of tacks [fol. 201] thrown out there where you park your car?

A. Well, we found them on two occasions. The first time we found a bunch of nails. They were strewn just in our own parking lot, and about a week later a fine job of seeding our whole lot with roofing tacks and I brought them along with me to the—

Q. Have you got them here with you?

A. Court.

Q. May I see them please.

A. I want to tell you where they were. They were throughout our whole parking area. They were in my own driveway at home and they were in the driveway of about twelve girls in our plant and their own homes. That was the supply that was picked up on our own lot.

Mr. Shaver: Your Honor, this is—

Mr. Woods: Where did you say this occurred? I didn't understand you.

Mr. Shaver: Here are the tacks. This was during the first strike.

Mr. Woods: This was during the first picketing?

Mr. Shaver: Yes, sir, I would like to introduce the tacks into evidence.

The Court: All right, sir.

(Thereupon, the articles referred to were marked Plaintiff's Exhibit No. 1, received in evidence and made a part of this record.)

[fol. 202] By Mr. Shaver:

Q. And I would like for you to say, if you can, whether they made a great to-do about your not picketing unless you carry a placard? Was there any placards pasted on the lot and over the tents, all over the tent?

A. They had three that I believe that were hung there.

Mr. Shaver: I believe that is all.

Recross Examination:

By Mr. Woods:

Q. Now, Mr. Bonady, actually you and the strikers had a good many verbal exchanges? I mean you talked to them and they talked to you and on some occasions didn't you even sing songs back to them?

A. Are you asking me a question?

Q. Yes, sir.

A. What was it, sir?

Q. I asked you if you didn't have some verbal exchanges back and forth on a number of occasions. You talked to them and they talked to you and you all discussed things back and forth, isn't that right, with the strikers?

A. I will have to ask you again.

Q. Yes.

A. Are you asking me the question if I carried a conversation on with your people?

Q. That is right.

[fol. 203] A. In the period of three weeks the first time and one week of this time I carried on no conversation with them whatsoever except for one occasion after they had irritated me to the point where Mr. Youngdahl, Mr. Chandler was walking up and down the street in a raincoat that was manufactured at our plant and after hearing things called, scabs and so forth, I just reminded him that he was wearing a scab raincoat, and that is the only time I talked to anybody on that picket line in the pursuit of my duties over there at that plant.

Q. Did you ever sing any songs back to them?

A. No, sir.

Q. You never did. Was that coat made at Racine?

A. It was.

Q. Or down here?

A. It was.

Q. It was made at Racine?

A. It was made at Racine.

Q. And I assume that Mr. Chandler wouldn't consider that a seab raincoat then, sir?

A. I don't see why not, sir, because he sent some people up there to picket that plant too, so if he picketed that plant there must have been some scabs inside making those coats.

Q. Well, did the people come out on strike up there at Racine?

[fol. 204] A. Did they come out on strike?

Q. Yes.

A. Not to my knowledge.

Mr. Woods: Not to your knowledge. I believe that is all.

(Witness excused.)

Thereupon, Mrs. DOLLIE JONES, called as a witness on behalf of the plaintiff after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct Examination,

By Mr. Shaver:

Q. What is your name?

A. Mrs. Dollie Jones.

Q. Now, you are not, of course, scared?

A. I am a little.

Q. Let's just relax. There is nothing to be scared about.

Mrs. Jones, are you working down at the Rainfair?

A. Yes, sir.

Q. And how long have you been working there?

A. Twenty months.

Q. Twenty months?

A. Uh-huh.

Q. And where do you live?

[fol. 205] A. 322 Canal here in Wynnë.

Q. And who else, does anybody else live close there that works up there too?

A. Miss Nadine Johnson does. She lives next door to me.

Q. Lives next door to you?

A. Yes, sir.

Q. Now, as you go to and from the plant, how do you do that? What is your mode of transportation?

A. I go in my car.

Q. And do you park your car there on the Rainfair property?

A. Yes, sir.

Q. As you get out of your car and go into the plant during the picket line this last time from Monday on, would you tell the Court what names you were called as you would go to and from the plant?

A. Well, I was called a scab almost every day.

Q. And was any other names you were called?

A. I don't recall any right now.

Q. Was this done by a group of people, or just one person or how was it done?

A. I think the group.

Q. In a group?

A. Uh-huh.

Q. And where was the group assembled?

A. Right across from the factory.

[fol. 206] Q. Right across from the factory?

A. Across the road.

Q. Were they around the headquarters?

A. They were right out in front of the tent.

Q. Right out in front of the tent?

A. Yes, sir.

Q. And was that close to Mr. Hamrick's property?

A. Well, the first strike was.

Q. And they moved the tent further down so it would be closer in front of the building?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Now, when you were at home on June 21st, were you and Nadine Johnson there at home on June 21st when Lois Morrison came by there at your home?

A. We were at a neighbor's house.

Q. You were at a neighbor's house?

A. Yes.

Q. Whose house were you at?

A. Mr. Charlie Bone's.

Q. Charlie Bone's, and what date was it, do you recall?

A. I don't remember the date.

Q. Well, was it last week?

A. I believe it was the week before last.

[fol. 207] Q. You have got here on June 21st, is what we have put in the complaint.

A. I really don't remember.

Q. And can you tell what happened? Maybe I can help you date it this way. Was it before or after this last strike started, picket started?

A. It was after it started, I believe.

Q. All right. Now, just tell what happened there and what Lois--was anybody with Lois Morrison?

A. Florence Roberts.

Q. Who?

A. Florence Roberts.

Q. Florence Roberts and Lois Morrison. Now, who was driving.

A. Florence.

Q. Florence was driving, and what, if anything--did they stop the car?

A. No, they slowed. Slowed down some.

Q. And what did they tell you?

A. Lois stuck her head out of the window and hollered, "You gals better check your sheets tonight. There might be a snake in them."

Q. And is that what she said?

A. That is all she said.

Q. And then the car went on, is that right?

A. That is right.

[fol. 208] Mr. Shaver: I believe that is all.

Cross Examination.

By Mr. Woods:

Q. Now, Mrs. Jones, this was after you had gone home from work in the evening?

A. Yes, sir, it was late in the afternoon.

Q. Late in the afternoon, an hour or two after you had gotten off from work?

A. I think it was around six o'clock if I am not mistaken.

Q. And you were sitting over on the lawn of a neighbor's home?

A. Yes, sir.

Q. And these girls came by in a car and slowed down?

A. Yes, sir.

Q. And said that to you. Mrs. Jones, didn't you sign an application card to join the Union originally?

A. I did.

Q. And you went out on strike the first time, didn't you?

A. Yes, sir.

Q. About how long were you off?

A. I was out one day.

Q. You were out—

A. Two days.

Q. You were out two days?

A. Yes, sir.

Mr. Woods: I believe that is all.

[fol. 209] Mr. Shaver: That is all.

The Court: Let me ask you this, Mrs. Jones. Did you know anything about a snake having been found in the plant, down there?

The Witness: I just heard it was all. I didn't see it.

By Mr. Woods:

Q. Mrs. Jones, why did you go back to work?

A. Well, needed my job is the biggest reason, I guess.

Q. You needed your job. Anyone coerce you or—

A. I saw what was—

Q. Persuade you, anyone come and talk to you about going back to work?

A. No.

Q. Now, did that snake statement, did you know what she was talking about in that snake statement? Did you know what she meant when she referred to a snake?

A. Well, I don't know, unless—

Q. Had there been a rumor, had it been talked around for two or three days there about the snake being found in the plant?

A. Yes, sir.

Q. And everybody was talking about it?

A. That is the only reason I could know that they said it.

Q. So you knew that is what she was talking about? In fact, it was general knowledge, wasn't it?

A. Yes, sir.

[fol. 210] Q. Now, did that statement frighten you there?

A. No, not at all.

Q. In any way? You just didn't pay much attention to it at all?

A. No.

Q. Did you regard it as a joke?

A. I guess so.

Mr. Woods: That is all.

Mr. Shaver: That is all.

(Witness excused.)

Thereupon, NADINE JOHNSON, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct Examination.

By Mr. Shaver:

Q. This is—we would like to stipulate to save time that she would testify that the same thing happened. You heard Dollie Jones' testimony?

A. Yes, sir.

Q. Is what she stated—were you present, hear the remarks made?

A. Yes, sir.

Q. And what effect did that have on you? Did you know about the snake down there at the plant?

[fol. 211] A. Yes, sir.

Q. And did you imply anything from what was said about shaking your sheets at night, you might find a snake in it?

A. Well, I didn't shake my sheet. I mean I just didn't think nothing about it. I just didn't think no more about it.

Mr. Shaver: That is all, then, if Your Honor please.

Mr. Woods: That is all.

(Witness excused.)

Thereupon, RUBY REYNOLDS, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. Your name is Ruby Reynolds?

A. Ruby Reynolds.

Q. And, Mrs. Reynolds, do you work at the Rainfair plant?

A. Yes, sir.

Q. How long have you worked there?

A. It was a year in April.

Q. A year in April?

A. Uh-huh.

Q. How do you go to and from the plant?

[fol. 212] A. Well, most of the time I drive with somebody else, but sometimes I take my own car, very seldom.

Q. In other words, most of the time you take your own car?

A. Most of the time I am with somebody else.

Q. Oh, I see. Now, since the picket line has been put up there, as you get out of the car and go to and from your work, would you tell the court what they called you?

A. Well, the first time they was picketing it they didn't have anything to say to me. I mean, you know, they didn't say anything, but the last time why they hollered, "Get the hot water ready," and "I am coming to make another payment on the baby, call Dr. Beaton," and here last week I went to the doctor and one day they said, "Why you can work another hour until you go in the delivery room at least." They said, "There js no need in going up there right now," and when I came back they asked me did I go on a false alarm. Just mostly my condition is what they—

Q. Now, what effect did ridicule about your having the baby, how does that affect you in your trying to work down there?

A. Well, that is I don't appreciate it. I mean I don't think my condition has anything to do with it at all. I mean my working in my condition, I don't think that they should even pay any attention to that.

Q. Now, were these remarks made to you, was it made by [fol. 213] a group of people or—

A. No, there was two in particular, people that did most of the talking, and that was Florence Roberts and Lois Morrison.

Q. Did you observe people standing close to the street around the tent as you go and come and what activities they was carrying on?

A. Yes, they usually got in a group there, especially when we went to work and when we came out at noon, and then when we came out in the afternoon. They was usually there in a group.

Q. And what did they say and some of the things they hollered at you people going to and from there?

A. Well, they called them scabs and hollered, of course, the last time they hollered at me about my—"Get the hot water," and everything.

Q. Now, then were you downtown recently?

A. Yes, we—we drove up to a service station about the same time these strikers drove up to the service station and the attendant came out to ask who was there first and they said—we didn't say anything, and they said, "Why we was here first. You don't want to wait on those scabs before you do us." They said, "They are scabs."

Q. Now, who said that?

A. That was Lois Morrison and Florence Roberts.

Q. And when did that happen?

A. It was the week that the second strike began. I don't [fol. 214] know the exact day.

Q. And whose filling station was it?

A. It was at Roy Kong's filling station.

Mr. Shaver: That is all.

Cross examination.

By Mr. Woods:

Q. Mrs. Reynolds, does any personal animosity exist between you and these other two girls?

A. We was—I guess we was, I called it friends before it started.

Q. Before this, before this started?

A. I mean I didn't have anything against them, see.

Q. And the remarks that you have detailed here have come, you say, from these two girls?

A. Yes, mostly. Now, I wouldn't say that any of the others didn't say anything, but it come mostly from these two.

Mr. Woods: I see, I believe that it all.

(Witness excused.)

Thereupon CORLIS JONES, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

[fol. 215] Direct examination.

By Mr. Shaver:

Q. What is your name, please?

A. Corlis Jones.

Q. And where do you live, Mrs. Jones?

A. Parkin.

Q. And do you work at Rainfair?

A. I sure do.

Q. How long have you worked there?

A. I started the day it opened.

Q. Started the day it opened. You get along all right down there?

A. Doing fine.

Q. And now when this strike occurred, the picket line thrown up Monday, did you go to and from the plant by automobile?

A. Yes, sir.

Q. And you pulled your car up?

A. In a parking lot.

Q. Park in front there headed toward the plant, is that right?

A. Yes.

Q. Over the time that the picket line was there, what remarks, if any, did the picket—the people on the picket line holler at you?

A. Well, the same thing, scabs and yellow scabs and fat scabs, cotton patch scabs and just all kinds of scabs.

[fol. 216] Q. Well, now, did that happen once or did it happen if you were going and coming from the plant during the time that the picket line was there?

A. It was happening at the plant as I go backwards and forwards to the automobile to go home.

Q. Now, did it happen, was it a group of people hollering that to you or was it one or two or just tell the court how the group assembled down there and how this would go on.

A. Well, as we would come out, they would all move forward from where they were at, and then they would all just call names and they would call you a name personally and sometimes they would just call you scab as the rest of them and sometimes they would call and say, "Corlis is a big yellow scab, a big this, that and just making remarks, you know, about being a slave, and it didn't bother me so much until they called my name personally, and then when they called my name personally, of course, I just didn't like it. It would make me more nervous.

Mr. Shaver: I believe that is all.

Mr. Woods: No questions.

(Witness excused.)

Thereupon, LORENE JONES, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in [fol. 217] answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. What is your name please?

A. Lorene Jones.

Q. Where do you live, Mrs. Jones?

A. I live at Parkin.

Q. And how do you go—do you work at Rainfair?

A. Yes.

Q. How long?

A. I have worked there since September.

Q. As you go to and from the plant, how do you—how is transportation provided?

A. I ride with another girl.

Q. You ride with another girl. The picket line thrown up there last week at the plant by the Union, there was a picket line thrown up there?

A. It sure was.

Q. Now, as you would get out of your car and go to and from your work, would the pickets accost you and say things to you?

A. Yes, they did.

Q. Who were they?

A. It was Florence Roberts and it was Lois Morrison and it was Ruth.

[fol. 218] Q. Ruth, Ruth who?

A. That Union girl, I don't know her last name.

Q. Is she sitting right over yonder? Who is that?

Mr. Woods: There are two sitting over there.

Mr. Shaver: Which one of them?

Mr. Woods: The one on the right hand side?

The Witness: That little old skinny one. (Laughter)

Mr. Woods: Ruth Ralph.

By Mr. Shaver:

Q. Ruth Ralph. What would they say to you, Mrs. Jones?

A. They called me fuzzy-headed scab and they called me a slave.

Q. Well, now was that done often, that is as you would—

A. Yes, and they called me a scab all of the time.

Q. They called you a scab all of the time?

A. And Lois, Lois Morrison called me a damned fool and Florence Roberts called me a filthy face.

Q. Now, I notice one time didn't you eat dinner out there in your car? Did you eat sometimes, do you go out and eat your lunch in your car?

A. Yes, sir.

Q. What happened out there when you were sitting out there eating your lunch?

A. They always bollered ugly things at us.

Q. And what did you do about it? Did you just take it?
[fol. 219] A. Why I had to.

Q. Did they say to you why they called you these things, why they wanted to make you mad?

A. Yes, they did. They said they wanted to make us mad so we couldn't get our production and Pete would get mad at us and use the whip on us. Ruth said that.

Q. Now, as you—you work at a machine?

A. Yes.

Q. And I believe the south side of the plant?

A. Yes.

Q. Is open and there's windows on Martin?

A. Yes, there sure is.

Q. Now, would you tell the Court how the picket line acts on the south side of the street, please.

A. They come over there and they sit down and they point at you and they call you ugly names and Lois Morrison spit at me three times through the window.

Q. What kind of signs did they make from the picket line looking through the window?

A. They would just point at you and laugh and holler and talk to each other like we were monkeys in a cage or something. That is the way they acted.

Mr. Shaver: That is all.

Cross-examination.

By Mr. Woods:

[fol. 220] Q. Mrs. Jones, now you talked a little back at them, didn't you?

A. Yes, I got very much temper and I always said something. Sometimes, the first time I did, but the last time I didn't say anything.

Q. You have got a pretty good, high, sharp tongue to you, haven't you?

A. When I am mad, yes.

Q. When you are mad and they made you mad, didn't they?

A. The first time I did. I said I didn't. The second time I didn't say anything.

Q. You mean during the first strike?

A. Yes, but the second time I didn't say anything.

Q. I see. But you got pretty rough on them the first time?

A. Yes, but they said plenty to me too.

Mr. Woods: I see. I believe that is all.

Mr. Shaver: Was she sworn? I don't remember. Were you sworn?

The Witness: No.

The Court: Hold up your hand.

Mr. Woods: We will waive that and stipulate she was sworn.

Mr. Shaver: We will stipulate she was sworn. I believe that is all.

The Court: You understand that whatever you said was [fol. 221] under oath?

The Witness: Yes.

(Witness excused.)

Thereupon, ELLA JANE CLARK, called as a witness on behalf of the plaintiff, after having first been duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. Your name is Ella Jane Clark?

A. That is right.

Q. How old are you Miss Clark?

A. I am twenty-three.

Q. Are you married?

A. Yes.

Q. Do you work at Rainfair?

A. I do.

Q. How long have you worked there?

A. It will be eight months today.

Q. Eight months. You have noticed that a picket line was thrown up down at the plant by the Union?

A. I sure have.

Q. How do you go to and from the plant?

A. In my car.

[fol. 222] Q. And you park your car up in front of the building there?

A. Well, not exactly in front, kind of out to the side.

Q. Kind of out to the side?

A. Uh-huh.

Q. Will you just tell the Court what the picket line did to you as you would go to and from your work?

A. Well, they just called us scab and pony-tail scab and just called us fools and just stuff like that.

Q. Called you fools?

A. Uh-huh, sing at you.

Q. Do you know why they would call you a fool?

A. Because I cross the picket line, I suppose.

Q. Because you crossed the picket line. Now, was this done by a few people or was it done by a group of people? Explain to the Court how it was done.

A. It was done in groups and also just people, two or three at a time.

Q. Did you observe them, the picket line, how they acted on Martin Drive, out on the south end? Did you see them down there?

A. Pointing?

Q. Yes.

A. Yes, I sure did.

Q. And what did they do down there while you were all at your work and you could observe them from the window and they could observe you from the street.

[fol. 223] A. Well, it's just as close off of the level of the Rainfair property without getting over, and then they would just point and lean over and sometimes they would sit down and they would just point and gige and act silly is all I know.

Q. Did they make signs to you?

A. Just point is all.

Mr. Shaver: That is all.

Cross-examination.

By Mr. Woods:

Q. Did you ever talk back to them?

A. No.

Q. You never did?

A. No.

Q. Did you join the Union?

A. No.

Q. Or apply for membership in the Union?

A. No.

Mr. Woods: I believe that is all.

(Witness excused.)

Thereupon, ANNIE BROWN, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

[fol. 224]

Direct examination.

By Mr. Shaver:

Q. State your name, please?

A. Annie Brown.

Q. Mrs. Brown, are you nervous?

A. No, not much.

Q. Are you the wife of Mr. Brown here?

A. That is right.

Q. The peace officer?

A. Yes, sir.

Q. He said his wife worked at the plant.

A. Uh-huh, that is right.

Q. Mrs. Brown, how long have you worked in the plant?

A. Oh, I guess sixteen months or better.

Q. Mrs. Brown, how do you go to and from the plant?

A. Well, for the last week or a little over I have been riding with another girl and sometimes Elmer comes and picks me up in the afternoon, but I go to work most of the time with another girl.

Q. Now, would you explain as you would go to and from the plant what these pickets would call you?

A. Well, when they would see me get out of the car, they would, you know, call my name and go to singing, you know, that they was going to roll it over me, and they would holler and ask me where was the policeman this morning and why wasn't he along, wasn't I afraid there without the police—[fol. 225] man, and things like that.

Q. You mean that meant . . . at that was your husband?

A. Yes, sir.

Q. Your husband being a policeman?

A. I guess. That is what they would ask me.

Q. Well, did they call you a scab?

A. Yes, sir, they did.

Q. Did they expand the word, "scab" to you, about your husband? Did they call your husband, tell you why you was a scab?

A. Well, one afternoon whenever he came up there after me, well, Lois Morrison told him that he was a scab, because he was married to a scab.

Q. Well, now did all of that make you very nervous?

A. Yes, sir, it did.

Q. How did it affect your work and your home life and your happiness?

A. Well, sure when I don't know whether everybody is like I am or not, when I get mad I get nervous, and it kind of makes me sick and I don't know. It just upsets me and you just can't do as much work when you go in and them hollering at you and get you mad. It's just—and you can't say anything back to them and, if you could say something to them, it wouldn't hurt you so bad.

Q. Well, now did you notice some of the pickets over on Martin Drive where they could look in the window and see?

[fol. 226] A. Yes, sir.

Q. And you could see them from where you were?

A. Yes, sir.

Q. Would you tell the Court while you were working what the picket line did over on that side?

A. Well, they would put up their hands like this (indicating) and make signs and stick their tongue out and sit and hold their nose and blow it out and just holler and yell and point to the window.

Q. Now, when you say stick their hands up there, you are

sticking your hands up and putting your thumbs in your ears?

A. Yes, and make signs like that.

Q. And you say when they grab their nose, to get it in the record, you grabbed your nose and throwing your hand like that, is that what you are saying?

A. That is what they did do, yes, sir. They would point and talk and just make fun of us.

Mr. Shaver: That is all.

Mr. Woods: No questions.

(Witness excused.)

Thereupon, GERALDINE BAKER, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

[fol. 227] Direct examination.

By Mr. Shaver:

Q. Your name is Geraldine Baker?

A. Yes, sir.

Q. Do you work at the Rainfair plant?

A. Yes, sir.

Q. How long have you worked there?

A. Five months today.

Q. Five months today: Has the strike being going on?

A. Yes, sir.

Q. I mean picket line down there?

A. Yes, sir.

Q. And how do you go to and from your work?

A. I ride with a friend.

Q. Ride with a friend?

A. Yes, sir.

Q. Have you observed the acts of the picket line as you would go to and from your work?

A. Yes, sir.

Q. Would you please tell the court what they called you?

A. Well, one afternoon I left. As I started to leave the plant when I got off and I was walking by the warehouse

and my friend always parks her car on the Martin Side Drive and I was going around and Lois Morrison hollered, "Oh, look there at that low-cut dress and big earring girl," and, "Does Pete still like low-cut dresses and earrings?" [fol. 228] And I said, "I don't know. You will have to ask him," and she said, "If he does, I think I will get me one," and I said, "It won't do you any good. You don't have anything to fill it out."

Q. Well, now, did they call you a scab?

A. Well, they always called me fat scab. That was in the group. That was no one individually.

Q. Now, was that done en masse or in groups or was it done individually or both ways?

A. Well, they called me a scab. It was in a group. It was in a group, the biggest part of the time.

Q. And where was the group?

A. Across from the tent, across from the Rainfair door.

Q. And were these people that we got here, Youngdahl, some of them, Norma Cobb, Hazel Kennedy and Pauline Griffin and Florence Roberts and that is the group that was doing it over there?

A. Yes, sir.

Q. And did that happen two or three times a day as you would go to and from work?

A. Yes, sir, and on Tuesday morning when I would come to work and I got out of the car and Florence was walking, carrying the picket on Martin Avenue, she asked me where my big earrings were because I didn't have any on and I asked her if it was any of her business and she said it sure [fol. 229] was and I told her to come over and make it some of it because my ears was over here on Rainfair property.

Mr. Shaver: I believe that is all.

Cross-examination.

By Mr. Woods:

Q. You invited her to come over?

A. I sure did.

Q. Now, did this conversation make you nervous?

A. Well, it didn't make me nervous. It made me mad because I don't like—

Q. It made you mad?

A. It sure did.

Q. Did it hurt your production any?

A. Well, I am not on piece work and it didn't too much.

Q. It didn't bother you too much at all. You can pretty well hold your own, can't you?

A. Well, I worked two or three different places, yes, sir.

Mr. Woods: I believe that is all.

Redirect examination.

By Mr. Shaver:

Q. You think you have got a right to work without being molested, don't you, and insulted?

A. I sure do, because I worked before I started out there, six days a week for \$15 a week, and I have got two boys [fol. 230] to support.

Mr. Shaver: I believe that is all.

(Witness excused.)

Thereupon, DOROTHY DAVIS, called as a witness on behalf of the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. Your name is Dorothy Davis?

A. That is right, Dorothy Davis.

Q. Where do you live?

A. Four miles out of Wynne.

Q. You work at Rainfair?

A. Yes, sir.

Q. How long have you worked there?

A. Seventeen and a half months.

Q. Getting along all right down there?

A. Just fine.

Q. You notice the picket line has been thrown up down there this week, this last week?

A. Yes, sir.

Q. And how do you get to and from your work?

A. I drive a truck.

Q. And you park your truck there on the——

A. On the south side.

[fol. 231] Q. On the south side. Will you tell the Court what they say to you as you come in to work?

A. Well, they would call me dumb scab, cotton picking scab and just scabs, all kinds of scabs.

Q. Just all kinds of scabs. Now, where are these folks assembled that called you these things, where are they?

A. Out in the middle of the road and around the tent, just scattered all around.

Q. Is it done in a——

A. Some of them not walking.

Q. Or in a mass, or is it done individually or like how is it done, or done both ways?

A. In both ways.

Q. Both ways?

A. Sometimes they are walking. When they are walking, carrying the signs as we get out of the car they call us scabs.

Q. Now, what is that song they sing to you about Davy Crockett that they say is a Union song?

A. Well, that has the tune to Davy Crockett, but they say, "Born in a cotton field in Arkansas, the greenest gals we ever saw, working for Rainfair for seventy-five cents."

Q. They sang that to you?

A. And they also sang, "When the scabs go marching in," using the tune When the Saints go Marching In, as we all start in the building.

[fol. 232] Q. They changed the religious songs to when the scabs go marching in?

A. "When the scabs go marching in, oh, how I would hate to be in that number when the scabs go marching in."

Mr. Shaver: That is all.

Cross-examination.

By Mr. Woods:

Q. Well, when the Saints go Marching In, that is not a very religious song. That is a popular tune today, isn't it, from a Broadway show?

A. Well, they have used it in the Church.

Mr. Shaver: He don't know.

By Mr. Woods:

Q. Isn't it played on juke boxes around here?

A. I have never heard it on a juke box.

Q. You never have?

A. I have always heard it in Church.

Q. I see.

Mr. Shaver: What Church do you belong to, son?

Mr. Woods: Methodist. That is from a recent Broadway show. I don't have any questions.

The Court: Anything further from this witness. You may be excused.

(Witness excused.)

Thereupon, JACK COBB, called as a witness on behalf of [fol. 233] the plaintiff, after being first duly sworn by the Clerk, in answer to questions propounded, testified as follows, to-wit:

Direct examination.

By Mr. Shaver:

Q. What is your name?

A. Jack Cobb.

Q. And what is your position?

A. Chief of Police.

Q. Of the City of Wynne?

A. Yes, sir.

Q. How long have you been Chief?

A. Since '48.

Q. Now, as Chief of Police, were you called down to Rainfair when the picket line was thrown up there?

A. Yes, sir.

Q. Who called you?

A. You are referring to the last picket line or—

Q. The last picket line.

A. Charlie Gossett.

Q. And does he work for Rainfair?

A. Yes, sir.

Q. And after the picketing went on for several days, did anybody else call you?

A. Mr. Chandler called me last Thursday morning. He wanted to file a complaint or he wanted to go on record [fol. 234] with some complaint, I believe he said, but I was on my way to Memphis, and couldn't talk to him. I told him if he had any complaints to file it with the Prosecuting Attorney. He came by the office there Friday morning was a week ago this morning and said he wanted me to go on record as he wanted me down there at the plant each morning at noon and the afternoon, 3:30, I believe, and also wanted me there on the rest period at 9:30 and 2:30, and I told him that's impossible. I couldn't do that.

Q. Now, did he say why he wanted you down there?

A. He just wanted to go on the record that he had asked me to be down there.

Q. Did he make any statements about he was afraid there would be violence?

A. Mr. Chandler also called me that Friday at noon about 12:20. I just sat down to eat dinner and asked me to come down there at once and I asked him what the trouble was and he said there was two of the workers that walked out down there to the end of the walk with pop bottles in their hands, and I told him that I didn't see any violation in that and he asked me if I would come and I told him I would, and I got up from the table and went down there.

Q. What did you find?

A. There wasn't anyone outside of the plant when I got down there.

[fol. 235] Q. Now, as I understand it, you were down there just every, once or twice every day from the time the picket line was thrown up?

A. I was down there on the other strike from the first morning that they throwed up the line on the morning when they would go to work, at noon each day, and Mr. Hamrick was down there on the shift when they turned out at 3:00 or 3:30, what time it might have been, I wasn't there in the afternoon.

Q. You weren't there in the afternoon?

A. No, sir.

Q. Now, you were there attending during the old strike and the new strike?

A. Yes, sir, that is right.

Q. I mean the new picket line and the old picket line?

A. Yes, sir.

Q. Did you notice any difference in the way they were carrying on and the atmosphere down there?

A. There was a difference in the other time and this time.

Q. There was?

A. Yes, sir.

Q. What difference?

A. Well, there was just more tension on each side.

Q. More tension?

A. Yes, sir.

Q. In the last picket line?

[fol. 236] A. Yes, sir.

Q. Now, what caused the tension down there?

A. I don't know that, Mr. Shaver.

Q. Well, can you tell the Court how they acted down there from the tent side?

A. Well, I just—each side, I just felt there was going to be trouble. I told Mr. Chandler I felt so. I told Mr. Brown I thought so. There was a different attitude the last time than there was the first time.

Q. Well, you know that that is a narrow street down there?

A. Yes, sir.

Q. It is very narrow, isn't it?

A. Yes, sir.

Q. Did you see cars parked out there in the street on both sides?

A. On both sides.

Q. Both sides or either side?

A. On the other street, Mr. Chandler and them would park on one side of the street in front of Mr. Hamrick's house. They had no way to get off of the street, but I believe the workers all parked on the parking lot.

Q. This time?

A. Each time.

Q. Oh, yes, the workers parked on the parking lot.

A. Yes, sir.

[fol. 227] Q. Now, did the strikers this time at any time while you were down there have their cars parked in the street down there?

A. I believe on Monday morning they did park their cars. I didn't know at the time whose cars they were, on Martin Drive east of the plant, that is east of Rowena. Later on in the day they built them a bridge and put them on their property.

Mr. Shaver: I believe that is all.

Cross Examination.

By Mr. Woods:

Q. Chief, as a matter of fact, haven't they put a little bridge in there? Now, don't they pull their cars on the property they rented?

A. That is correct, yes, sir.

Q. Now, Chief, you don't know of any actual violence having occurred down there, do you? Do you know any?

A. No, sir, we have had none.

Q. And you haven't had any. The only incident reported to you has been this incident when Mr. Chandler mentioned some of the workers having pop bottles?

A. Yes, sir, that is right.

Q. That is the only report that you have had of any violence?

A. And there wasn't any violence at that time.

Q. There wasn't any violence at that time?

A. (No response.)

[fol. 238] Mr. Woods: I believe that is all.

Mr. Shaver: I believe that is all.

(Witness excused.)

Mr. Woods: Your Honor, could we have about a five minute recess to decide if we want to call any rebuttal witnesses?

The Court: Yes, sir, have you rested? Are you through?

Mr. Woods: I understood that was all.

Mr. Shaver: I think I am. I want to see just a minute.

The Court: Court will be in recess ten minutes.

(Thereupon, a ten minute recess was had, and thereafter occurred the following proceedings.)

STIPULATION OF COUNSEL

Mr. Shaver: It is agreed that Rainfair, Inc., is engaged in manufacturing pants, slacks, mens' slacks in the City of Wynne, Arkansas. The pants are not sold at the plant, but are shipped back to Racine, Wisconsin, and seven men are employed including the manager and approximately eighty women at the present time.

That is all.

Thereupon, the hearing was closed.

[fol. 239] Reporter's Certificate to foregoing transcript omitted in printing

[fol. 240] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

ORDER APPROVING TRANSCRIPT—October 21, 1955

On this day comes Scrivner Mizell, acting court reporter in the Cross County Chancery Court, who, by consent of the parties in the above styled cause, reported the testimony of the witnesses therein at the hearing before the Court of said cause on July 1st, 1955, a day of the . 1955, term, and presents his transcript of said testimony and the same being examined by the Court and found to contain an accurate report of all the testimony of all the witnesses heard before the Court at said time, together with the ex-

hibits introduced in said cause, the same is approved and ordered filed as the testimony of said witnesses or as the Bill of Exceptions herein and made a part of the record in this cause.

Ford Smith, Chancellor

Date: Oct. 21, 1955.

[fols. 241-243] NOTE RE PLAINTIFF'S EXHIBIT NO. 1

Reporter's Note: Plaintiff's Exhibit No. 1 is not attached to this record by reason of its bulk, being roofing tacks but appears under separate cover.

[fol. 244] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

No. 3262-A

RAINFAIR, INC., Plaintiff,

VS.

JAMES E. YOUNGDAHL, et al., Defendants

Proceedings of July 27, 1955

Be It Remembered that pursuant to recess the above entitled cause was resumed on the 27th day of July, 1955, in the above Court, before the Hon. Ford Smith, Chancellor, presiding, when and where the following proceedings were had:

APPEARANCES:

For the Plaintiff: Messrs. Shaver & Shaver, By J. L. Shaver, Esq., of Wynne, Arkansas.

For the Defendants: Messrs. McMath, Leatherman & Woods, By Henry Woods, Esq., of Little Rock, Arkansas.

Mr. Woods: If the Court please, I would just like to say one thing before the Court starts hearing this notice of the contempt citation addressed to McMath, Leatherman and Woods. We don't represent anyone except Mildred

[fol. 245] Tacker, who is one of the Defendants in the original injunction. We haven't been employed by the other people, and I don't know whether we could ethically represent them. It might possibly complicate matters.

The Court: Suppose you get the proof completed in the other matter, then we can go ahead with that. Would that be all right?

Mr. Shaver: Yes, your Honor. Your Honor, since our last hearing you might show on the docket on July 20th, 1955, the filing of an amendment to the complaint. And Mr. Woods has today filed an answer. I don't know whether that shows or not.

The Court: No, sir; it does not. I will note it.

Mr. Shaver: And at this time I want to put Mr. Cobb on the stand.

JACK COBB, the next offered on behalf of the Plaintiff, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Shaver:

Q. What is your name?

A. Jack Cobb.

Q. And what official position do you hold with the City [fol. 246] of Wynne?

A. Chief of Police.

Q. On Tuesday morning, June 28th, 1955, were you called down to the Rainfair plant by Mr. Bondry?

A. Yes, sir; I was.

Q. Is that the correct date?

A. I don't have that date, Beck. But I was called down there by Mr. Bondry, but the correct date I wouldn't say.

Q. Well, was that about the date?

A. Yes, sir; that's about the date.

Q. And when you got down there what did you find with reference to glass being strewn in Rowena Street, and up along where the employees of Rainfair, Incorporated, park their cars?

A. Well, I found glass broken, and a big area of milk bottles, fruit jars, coca cola bottles; some of it out in the

street, but most of it up where Mr. Bondry parks his car.

Q. Who else was present there?

A. You were present, Mr. Bondry was present, and Lee Hamrick was present.

Q. Did you, together with the other people present, pick up that glass?

A. Yes, sir.

Q. Do you have it with you here?

A. Yes, sir.

[fol. 247] Q. Will you get it, please, sir.

A. This is it, in this box.

Q. Is this the glass you picked up?

A. Yes, sir.

Q. And I believe you say you got some of it in Rowena Street and some of it—

A. In the Parking area at the east side of the entrance.

Mr. Shaver: I would like to introduce the glass into evidence, if the Court please.

The Court: Let it be received.

(The said articles were accordingly received in evidence, marked Exhibit "1" to the testimony of the witness, and will be found among the exhibits hereto, but were returned to the custody of the officers).

Mr. Shaver: Now, your Honor, that concludes my proof in so far as showing the glass was there. I would like to show, with your permission, that this glass was turned over to the officers by you.

The Court: Yes, sir.

Mr. Shaver: May I do that?

The Court: Yes, sir.

Q. Mr. Cobb, at the trial of this case the last time here in Court on July 1st were you instructed by the Court to endeavor to find out who broke the glass and distributed it along the highway there?

A. I was, by the Judge.

Q. By Judge Smith?

[fol. 248] A. Yes, sir.

Q. And under his orders did you take possession of the glass?

A. Mr. Shaver, I got—actually the sheriff taken possession of the glass at that time. It was kept here in the sheriff's office.

Q. Under whose custody; do you know?

A. The sheriff's custody.

Q. The sheriff of Cross County?

A. Yes, sir.

Q. Did you, in company with anybody, make an effort to find out who broke the glass and scattered it up and down the highway over there?

A. I did.

Q. Just tell the Court what you did.

A. I had information that two of our local youngsters, Thomas Cobb and Jerry Hambrick, broke the glass. Mr. Shaw and me—I believe this was July 3rd—talked to those boys, got them in the office at the City Hall and talked to them one at a time. I believe Mr. Hambrick's boy was first—no; Mr. Cobb's boy was first. I called them on the telephone and they come up there, and admitted breaking the glass. He told us he and the Hambrick boy broke the glass. I asked him for what reason, and he couldn't give me any. He just broke the glass. That's all. I let him go on back home, and I went down to Mr. Hambrick's—he didn't have [fol. 249] a telephone—and picked his boy up and brought him up there. No; I'm wrong about that—yes. Back to the Cobb boy. He did have a reason, and I asked him what was his reason, and he said because Pete didn't treat his sister right.

Q. Did he say who his sister was?

A. Yes, sir.

Q. And who is she?

A. Mildred Tacker. I asked him what he meant by not treating her right. And he said "Well, he wouldn't give her job back to her down at the plant." I believe that was the discussion with the Cobb boy. Then I picked up the Hambrick boy, and he said he just broke the glass for no reason. He didn't give any reason.

Q. I would like to ask you if you used any—you named Mr. Shaw. Who is Mr. Shaw?

A. He is chief deputy sheriff out of the sheriff's office.

Q. Do you know whether Mildred Tacker was one of the persons on the picket line down there?

A. Yes, sir; she was.

Q. What is the Hambrick's boys name?

A. Jerry Hambrick.

Q. And is he the son of Lee Hambrick?

A. Yes, sir.

Q. And was Lee Hambrick one of the men out on strike—
[fol. 250] the first strike?

A. Yes, sir; that's right.

Q. And he never did go back to work, or do you remember?

A. No, sir; he never did.

Q. Was he on the picket line in the first strike?

A. Yes, sir.

Q. And did he prefer charges during the first strike in your court, in the City Court here, with reference to somebody trying to run over him when he was on the picket line? Or was that in your court?

A. Yes, sir; that was in City Court. He did.

Q. And he finally withdrew the charges?

A. That is correct.

Q. He was not participating in the second strike, or do you know?

A. Not as I know of, Mr. Shaver. He wasn't on the picket line.

Q. He was not?

A. He was not. I didn't see him out there.

Q. Now, when you were down there did you notice where these milk bottles came from? Any way for you to tell where the milk bottles came from?

A. No, sir; I didn't actually know where they might have come from. Both boys told me they came from Jewell Newby's trailer over there.

[251] Q. When were you down there did you notice two tub fulls of milk bottles sitting down there?

A. I did.

Q. Did you notice the two tubs were not full of bottles?

A. I did.

Q. You don't know, of course, where they actually came from, but you did notice two tubs of milk bottles right across in front of Jewell Newby's trailer?

A. They was in Mr. Hambrick's yard.

Mr. Shaver: I believe that's all. I would like to put Mr. Shaw on.

Mr. Woods: We will stipulate Mr. Shaw's statement would be the same.

Mr. Shaver: I would like to make this statement: There is a citation issued against Mildred Tacker—

Mr. Woods: She is one of the main Defendants.

Mr. Shaver: Then Mr. Hambrick is not a Defendant. He is not represented. He is here, but he is not represented. The two boys, I presume, are here.

The Court: Let's complete our record; then we will go into that. You may cross-examine.

[fol. 252] Cross examination.

By Mr. Woods:

Q. Chief, when you talked with the Cobb boy did he say any members of the union had told him to put these bottles there?

A. No, sir; he did not.

Q. He indicated it was his own idea?

A. Yes, sir. He said it was due to his sister losing her job. Mr. Bondry wouldn't put her back to work.

Q. But he didn't say his sister told him to put these bottles there?

A. He did not. He did not say anyone told him.

Q. I am sure you asked him about that in the course of your investigation?

A. I did; yes, sir.

Q. Chief, this injunction hearing I believe is concerning the second picket line. There were two picket lines. They first had a picket line up, then pulled it down, and put it back up. And Mr. Hambrick, as a matter of fact, didn't participate in the second picket line at all, did he?

A. Not as I know of.

Q. He wasn't even involved in the strike, which was the subject of this injunction, was he?

A. No, sir; he wasn't that I know of.

Mr. Woods: I believe that's all.

The Court: Let me ask you, Mr. Cobb, how old are these boys?

[fol. 253] A. I have that, Judge. Thomas Cobb is fifteen, and Jerry Hambrick is seventeen. That is the ages they gave me.

Mr. Shaver: Can't we agree, and does the record show we agree, that Mr. Show, who is a deputy sheriff, will testify the same as Mr. Cobb has?

Mr. Woods: Yes. Judge, I would like to move this testimony be stricken from the record as far as the injunction process is concerned. I don't see any connection between it and the members of the union, and I think it is incompetent and not material.

The Court: What do you say about it, Mr. Shaver?

Mr. Shaver: Well, Your Honor, the witness has testified that Mr. Cobb is a brother to Mildred Tacker. Mildred is one of the strikers, and he went down there because he thought that they had mistreated his sister. And this injunction is *brought* enough to take in sympathizers, associated acting in concert, and people of that kind. That is my answer to that.

Mr. Wood: Judge, I don't think—these boys here were not members of applicants of the union. They were merely youngsters, and I don't think there is any indication, and I seriously doubt they had any actual notice of the injunction, and were not parties to it. It does say people acting in concert, but I think the injunction means people actively engaged in the union, or sympathizers of it. I don't think [fol. 254] it is broad enough to reach out and pick up minor boys.

The Court: I think we will let it go in.

Mr. Woods: I want to note our objection and exception.

The Court: Yes; you may save your exception. Mr. Cobb, did this Cobb boy live in the same home with his sister, Miss Tacker?

A. Yes, sir.

The Court: All right. You may stand down.

(Witness Excused).

Mr. Shaver: Your Honor, I would like to file the executed return of that citation.

The Court: Yes, sir; it is necessary for it to be here I suppose. Mr. Woods, you represent Miss Tacker?

Mr. Woods: Yes, sir.

The Court: And none of the others?

Mr. Woods: That's all. Well, we represent the union, the main Defendants in the first injunction. She is the only one named.

Mr. Shaver: That's all we have, Your Honor.

Petitioner Rests

The Court: Mr. Sheriff, will you see if Thomas Cobb, Jerry Hambrick and Lee Hambrick are here. Call them, please.

They are cited here to show cause why they are not in [fol. 255] contempt of an order of this Court issued on the 24th day of June, 1955, a general injunction against picketing, and other things in connection with that, on the premises, or at Rainfair, Incorporated. And I was informed by the officers that after the date—the effective date of that injunction—that glass was broken and strewn on the parking area of Rainfair, Incorporated, and also in the streets adjacent to that. I have asked you here to show cause why you are not in contempt of this Court for not complying with that order.

Mr. Woods: Well, Judge, we—as far as the union is concerned we take the position that we had nothing whatsoever to do with, and were in no way connected with the actions of these people. I will be glad, if you desire, to put them on the stand and let them testify.

The Court: I wish you would, please, and you all examine them in the presence of the Court, if you will.

Mr. Woods: Sir?

The Court: I would appreciate it if you would put the ones you represent on the stand.

Mr. Woods: I would be happy to do that.

Respondents' Proof

Whereupon, the Respondents introduced the following [fol. 256] evidence, to-wit:

Mrs. MILDRED TACKER, the first witness, and one of the Defendants named herein, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Woods:

Q. State your name, please.

A. Mildred Tacker.

Q. Where do you live?

A. 1012 East Union; here in Wynne.

Q. Will you speak a little louder.

A. 1012 East Union.

Q. And you are one of the striking employees of Rainfair, Incorporated?

A. Yes, sir.

Q. And you are the sister of Thomas Cobb?

A. Yes, sir.

Q. Now, you were in the courtroom here and heard the Chief's testimony with reference to the glass which was strewn around the premises and in the street about the Rainfair Company. Did you have any knowledge whatsoever, Mrs. Tacker, of that incident?

A. I certainly did not.

Q. Did you tell your brother to put glass out there on the premises?

[fol. 257] A. No, sir; I didn't.

Q. Did you know your brother had put glass out there at all?

A. No, sir.

Mr. Woods: I believe that's all.

Cross examination.

By Mr. Shaver:

Q. Mrs. Tacker, I believe you live on East Union?

A. Yes, sir.

Q. And you live with—who do you live with?

A. I live with my mother and father.

Q. You live with your mother and father. And with—what is your brother's name?

A. Thomas.

Q. Thomas Cobb?

A. Yes, sir.

Q. Did you discuss this strike there in your home in front of Thomas Cobb?

A. I didn't discuss the strike with any of my people at all.

Q. You didn't discuss this strike with any of them?

A. No, sir; I certainly did not.

Q. You never mentioned it at home?

A. No, sir; I sure didn't.

Q. Did they know there was a strike?

A. Yes, sir; they did.

[fol. 258] Q. But they didn't find it out from you?

A. No, sir.

Q. This glass was found on Tuesday, June 28th. Now, on Monday night, June 27th, 1955, where were you?

A. I was at home.

Q. Who else was with you there?

A. My children.

Q. Your children?

A. Yes, sir. And my little brothers and sister. Thomas had gone down to visit Jerry. That is his best boy friend. They visited every day, either down there at Jerry's house or up at our house.

Q. In other words, Thomas wasn't up at your house?

A. No, sir. He was down at Jerry Hambrick's house.

Q. When did he go down there?

A. He went down there in the early afternoon.

Q. Had Jerry Hambrick been up to your house that day?

A. I don't think so.

Q. Now, you have been out on the picket line in both of the strikes?

A. Yes, sir; I have.

Q. Have you been out the second time?

A. Yes, sir.

Q. Were you in that group out there that was singing and yelling and hollering?

[fol. 259] A. I was out there; yes, sir.

Q. Ma'am?

A. Yes, sir; I was.

Q. Did you call the workers that went into the plant scabs, and things of that kind?

A. Some times I did.

Q. Did you call them other names?

A. No, sir; I didn't.

Mr. Woods: Your Honor, I am going to object to this.

Mr. Shaver: I am trying to show her interest in this part of it. That is what the purpose of it is.

The Court: Go ahead.

Q. Now, do you have—do you or do you not have an abiding hate existing in your heart against everybody who works down there at Rainfair, Incorporated?

A. No, sir; I do not.

Q. Don't you hold a hate in your heart today against all of those people who work down there?

A. Well, no; I don't.

Q. Then why would you get out and act like you did, and call them names?

A. I was just out there fighting for our rights—our security, our jobs, and bettering ourselves.

Q. And you think that singing and hollering out there in a [fol. 260] group like you were, you think that helps your rights?

A. Well, I don't know.

Q. You don't know. Who told you to do that, Mrs. Tacker?

A. Not anybody, I don't reckon. We just all struck together.

Q. Did Mr. Youngdahl tell you to do that?

A. No, sir; he didn't.

Q. He didn't tell you to do that?

A. No, sir.

Q. Well, did you just happen to do it?

A. I guess we did.

Q. But you claim you had nothing to do about telling your brother to go down there and strew that glass up and down the highway?

A. I certainly didn't have anything to do with it. I didn't know anything about it until the papers was brought to me about it.

Q. How old is your brother?

A. Fifteen.

Q. Was he ever on the picket line there with you all?

A. He never did walk the picket line. He never was on the lot. He came down and visited Jerry some.

Q. Was he ever out there at the tent at all?

A. He wasn't, only he was in the yard of Mr. Hambrick's. He never was at the tent.

[fol. 261] Q. Did he do any singing?

A. No, sir.

Q. Did he do any of the hollering?

A. No, sir.

Mr. Woods: She testified he wasn't in the group, Your Honor.

The Court: Do you have anything further?

Mr. Shaver: Yes, Your Honor.

Q. Did your brother eat out there at the tent, and drink out there with you all? I'm not talking about whiskey; I'm talking about soft drinks and water. Was your brother out there with you doing any of those things?

A. The first strike my brother was out there in the yard. He never was around the tent.

Q. That is, the second strike?

A. The second strike he never was around the tent.

Q. Did you ever talk to him after he confessed he did this?

A. No, sir; I haven't.

Q. You haven't talked to him?

A. No, sir; I haven't.

Q. But you all live in the same house?

A. Yes, sir. I tried to find out why he did it. He said he didn't have any reason. He said there was a bottle out

there, and they threw and hit it, and just kept throwing bottles.

Mr. Shaver: I think that's all.

[fol. 262] Re-direct examination.

By Mr. Woods:

Q. During the first strike—what we term the first strike—the strikers had their headquarters over in Lee Hambrick's yard, and this boy was friendly with the Hambrick boy, and that is why he was around there?

A. That's right.

Q. I'd just like to ask you one thing: You say you didn't discuss the strike very much at home. Your family, your parents, were very much opposed to the strike, weren't they?

A. That's right.

Q. And that is the principal reason you didn't talk about it around home?

A. That's right.

Mr. Woods: That's all.

Mr. Shaver: Nothing further.

The Court: You may stand down.

(Witness Excused).

THOMAS COBB, the next witness, after being first duly sworn, testified as follows:

Mr. Shaver: Your Honor, do you want me to represent the Court in examining him?

The Court: If you will, please.

[fol. 263] Direct examination.

By Mr. Shaver:

Q. What is your name, son?

A. Thomas Cobb.

Q. How old are you?

A. Fifteen.

Q. And do you live with your father?

A. And mother.

Q. You live with your father and mother up on East Union Street?

A. Yes, sir.

Q. And East Union Street is about how far from where the glass was strewn out there?

A. Well, I wouldn't know.

Q. Would you say half a mile?

A. Well, I'm not any good at guessing distances.

Q. You are no good at guessing distances. But the plant is in south Wynne, would you say; that is, the Rainfair Company plant?

A. Yes, sir.

Q. And you live in east Wynne?

A. Yes, sir.

Q. Now, I believe you told Mr. Kenneth Shaw and Mr. Cobb that you broke this glass here and strewed it up and down the road and street at the Rainfair Company's plant?

A. We didn't throw it up and down the street. We threw [fol. 264] some up in the plant, and maybe some landed in the street.

Q. Let me see. You didn't throw any in the street?

A. We threw it up in the plant. Some of it might have landed in the street.

Q. Where did you get the glass milk bottles and the coke bottles?

A. There was two baskets sitting over on the grass of Hambrick's yard, and they were level full.

Q. Level full of milk bottles?

A. Yes, sir.

Q. Is that the milk bottles in a wash tub in front of Newby's place?

A. They were in a basket.

Q. Where did you get the coke and soft drink bottles?

A. They were in baskets too. One basket was about half full.

Q. I believe you heard your sister, Mildred Tacker, testify?

A. Yes, sir.

Q. And you heard these officers testify?

A. Yes, sir.

Q. Now, did you ever hear this strike discussed in the house where you live?

A. No, sir; I never did hear it discussed.

Q. It never was mentioned?

[fol. 265] A. It never was.

Q. Did you tell the officers that the reason you did that you thought they were mistreating your sister and wouldn't hire her back?

A. Mr. Cobb said there was bound to have been one reason, and he said "Give me two reasons." I gave him one because they were mistreating my sister, and another was because I was mad at Mrs. Newby—I didn't want to have nothing to do with Mrs. Newby. I knew she was trouble.

Q. How's that again now?

A. I have heard she caused a lot of trouble.

Q. Is that the one—

A. That lives in the trailer.

Q. And works over at Rainfair?

A. Yes, sir.

Q. And you didn't want to have anything to do with her?

A. No, sir.

Q. You knew those were her milk bottles, didn't you?

A. No, sir.

Q. Whose did you think they were?

A. I thought they might be Lee's. I didn't know whose they were.

Q. Did you make the statement to the officers that you did that because you thought the Rainfair people had mistreated your sister because they wouldn't hire her back?

[fol. 266] A. I said moreover it would be that reason maybe more than because I was mad at Mrs. Newby, because I wasn't mad at her.

Q. You weren't mad at Mrs. Newby?

A. No, sir.

Q. Were you mad at the Rainfair people?

A. No, sir; I wasn't mad at either side.

Q. Then why did you throw that glass out there for people to puncture their tires on in the street?

A. I don't know. Just foolishness, I think.

Q. Sir?

A. Just foolishness, I guess.

Q. Didn't you throw it out there for the purpose of dam-

aging people's cars that came in there to work? Wasn't that the reason you did it?

A. I didn't want to blow out a tire, or anything?

Q. You didn't want to blow out any tires?

A. But I guess it could have caused it if they had run over it.

Q. Why did you throw it over on the Rainfair grounds?

A. I don't know.

Q. Just come on and tell me why. I'm a pretty good fellow anyhow. Just relax and tell me.

A. I can't tell you, because I don't exactly know the reason. I guess just because of foolishness—kid pranks.

Q. Did you feel like your sister had been mistreated?

[fol. 267] A. Well, I guess she was. What she was doing she was working hard and didn't get paid too much. She didn't get any more than she usually got, for running three machines. I don't think that's right.

Q. How did you find that out?

A. She told us she run three machines. When she started work she wasn't running three, but it was a pretty good while later she run this machine. She got on different machines later on.

Q. When did you go down to see the young Hambrick boy?

A. The day we done this throwing?

Q. Yes.

A. I think it was the 27th.

Q. The 27th of June?

A. Yes.

Q. Now, what did you go down there for?

A. To visit Jerry. We didn't have throwing that glass in mind. I went down there, and we seen that coke bottle out in the street and threw at it, and we got up the idea of throwing all of it.

Q. And you suggested that idea?

A. Yes.

Q. Huh?

A. We just seen that one, and threw at it.

Q. What time of day did you do that?

[fol. 268] A. It was just before it was getting dark, but it was still daylight.

Q. Just about would you say first dark?

A. I wouldn't know what you're talking about.

Q. You don't know what I mean by first dark. I see. Then after you did that where did you go?

A. I think we went to the show that night. We walked his mother down to the store and went on to the show.

Mr. Shaver: I think that's all.

By the Court:

Q. Let me ask you something, son. Have you been over where the headquarters of the union was?

A. The headquarters?

Q. Where they had their headquarters in a tent across the street from the plant. Have you been around there any?

A. Well, over where Lee and them used to have a garden, across from the plant?

Q. I don't know where they had a garden, but wherever they had the tent there where they congregated. Had you been over there?

A. When I came by the place with Jerry I would walk over there some time.

Q. Were you with the crowd across the street from Rainfair's at all?

[fol. 269] A. No, sir.

Q. Did you eat over there one day?

A. We was out in the yard, and they asked us over, and we went over to have a sandwich with them.

Q. Did you sing some with them?

A. No, sir; I didn't sing. I didn't stay around there.

Q. How many times were you over with the people that were around the headquarters, out on the lot, on the street, and all around the tent?

A. As my sister said, I come down and visited him very often.

Q. Most every day?

A. Practically every day maybe. Or maybe two or three days out of the week.

Q. That is while they were out on the street and while the picketing was being done?

A. Yes, sir. But I visited him other times than when the picketing was going on.

Q. Were you with the people there who were responsible for the picketing?

A. You mean the union?

Q. Yes.

A. Well, they were in the yard. I didn't get with them any, or talk with them.

Q. You say you did talk to them?

[fol. 270] A. No, sir.

Q. You didn't get around them at all?

A. No, sir.

Q. How many times did you get around the tent and eat?

A. Maybe once or twice.

The Court: All right.

Mr. Woods: May I ask one question?

The Court: Yes, sir.

Cross-examination.

By Mr. Woods:

Q. Son, was that when they had their headquarters over in Lee Hambrick's yard and had a tent over there in his yard, during the first strike?

A. Yes, sir.

Q. You were over there visiting the Hamrick boy. Was that when you went to see these people, or saw them and was around them?

A. Yes, sir; that is when I was around them.

Q. Now, when they had the second strike, when they went back they put this tent on the vacant property next to him. Did you visit them when they had the tent on the vacant lot?

A. No, sir. When they left I didn't know where they went. Me and Jerry just walked through the lot.

Q. But you were with them, or around them, when they [fol. 271] had their headquarters over in Lee Hambrick's yard? That is when you were around them?

A. Yes, sir.

Mr. Woods: That is what I want to know. That's all.

Mr. Shaver: I would like to ask some more questions.

The Court: All right.

Re-direct Examination.

By Mr. Shaver:

Q. Now, you knew the picket line was there the second time, didn't you, son?

A. Yes, sir, I saw it there.

Q. And you were visiting down there at Lee Hambrick's daily, were you not?

A. Well, not daily.

Q. Well, how often?

A. Well, I didn't come down there hardly any at that time.

Q. Well, you knew the picket line was going on that day, didn't you, that you threw the glass?

A. I don't think they had picketed that day.

Q. You don't think they had picketed that day. No; they had an injunction against them.

A. I didn't know what was the matter with them. They [fol. 272] was gone. I thought maybe it was over with.

Q. You thought maybe it was over with?

A. That they had given up, or something.

Q. When the second picket line took over, you then didn't go around them the second time now?

A. No, sir—well, when they had left I didn't know where they had gone, or anything. We didn't go in the tent. There wasn't a soul there when we went over there.

Q. In other words, that was the only time you went over there?

A. Yes, sir.

Q. But you were down there and saw the picket line marching and saw the tent out there?

A. Yes, sir.

Q. And saw the people in it?

A. Yes, sir.

Q. And did you hear them hollering at the people that would go to work? Were you there when that happened—and the singing?

A. Yes, sir; I heard them.

Q. You knew all about that, did you?

A. I heard them singing.

Q. And did you sing too?

A. No, sir.

Q. Did you holler at them?

[fol. 273] A. No, sir. What they done was none of my business.

Q. It wasn't any of your business?

A. No, sir. I stayed out of it.

Q. I believe you said before you and Mildred never discussed the strike, and her interest in it. You never discussed it with her?

A. We never did discuss it at all.

Q. You never mentioned it? Is that right?

A. Yes, sir.

Q. Did you all eat at the same table at home?

A. Yes, sir.

Q. Every day, three times a day?

A. Yes, sir.

Mr. Shaver: That's all.

By the Court:

Q. Where did you all get these bottles? Was that the tent where the baskets were or the trailer where the baskets were?

A. There was a trailer maybe a yard from the tent. There was a fence between the garden—they had a garden there one year. That is where the union had the tent there, and the baskets was sitting right next to the tent.

Q. The milk bottles came from baskets right next to the tent the union used?

A. Yes, sir. The union used the bottles. The tent was [fol. 274] about from here to the wall from the fence.

Q. And where were the baskets?

A. Sitting right by the fence.

Q. And away from the tent?

A. Yes, sir.

The Court: All right.

Mr. Woods: Could I ask one or two more questions?

The Court: Yes, sir.

Recross-examination.

By Mr. Woods:

Q. Son, you say you didn't have any idea about bottles, throwing bottles, or doing anything to the Rainfair Company when you went down there that afternoon?

A. No, sir; I didn't.

Q. Your sister didn't tell you to do any throwing of any bottles, or damage the Rainfair Company, or do anything to disobey the Court's injunction, did she?

A. No, sir; I didn't know anything about it.

Q. Did you know anything about an injunction having been issued?

A. No, sir.

Q. So you saw this coke bottle sitting out there, and you saw two big tubs of bottles sitting on Lee Hambrick's yard by the trailer, as I understand it?

[fol. 275] A. Yes, sir; sitting there by the fence.

Q. And you saw this coke bottle sitting out in the street. Was it or not over in front of the Rainfair property?

A. It was about this far (*Indicating*) from the Rainfair property, on the road.

Q. So you picked up a bottle and heaved it at the coke bottle?

A. Yes, sir.

Q. Are you a baseball player?

A. No, sir.

Q. So you tried to hit the bottle and missed it, and your bottle broke?

A. Yes, sir.

Q. So then you just started throwing the other bottles?

A. Yes, sir.

Mr. Woods: All right.

By Mr. Shaver:

Q. Let me get that straight. He asked you if you were a baseball player. You don't throw milk bottles in baseball, do you, and this kind of stuff?

A. No, sir.

Mr. Shaver: I don't know what he means by being a baseball player.

Mr. Woods: I thought maybe he was practicing base-[fol. 276] ball.

Q. But you knew when you threw all of that glass out in the street and over in Rainfair's where cars parked, you knew you were liable to puncture somebody's tire going up and down the highway and parking in there?

A. It probably would if they run over it.

Q. And you threw it there for that purpose, didn't you?

A. Well, not exactly.

Q. Well, not exactly. What do you mean by not exactly.

A. Well, I wouldn't want to puncture their tires. But I guess it looks like that, from throwing them over there.

Mr. Shaver: That's all.

By Mr. Woods:

Q. Son, you were just thoughtless, weren't you? You weren't thinking like you should have been that afternoon? Is that right?

A. Yes, sir; that's right.

The Court: Why did you pick this particular spot to do that, son? That is what I want to know. Why did you pick out just one location to throw bottles? Why didn't you throw them in front of Mr. Hambrick's house, or somebody else's house?

A. I don't know.

The Court: All right. Stand down.

(Witness Excused).

[fol. 277] JERRY HAMBRICK, the next witness offered on behalf of the Respondents, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Shaver:

Q. Your name is Jerry Hambrick?

A. Yes, sir.

Q. How old are you, Jerry?

A. Seventeen.

Q. You and Thomas Cobb are good friends?

A. Yes, sir.

Q. Been good friends a long time?

A. Yes, sir.

Q. Does he visit with you down at your house often?

A. Yes, sir.

Q. And do you visit with him?

Q. And I believe your house is located directly across from the Rainfair plant?

A. Yes, sir.

Q. It being on the east side of Rowena Street, and the Rainfair plant being on the west side of Rowena Street? Is that right?

A. Yes, sir.

Q. Your house faces west?

A. I guess. I don't know.

[fol. 278] Q. Sir?

A. It probably does.

Q. It faces that way (Indicating)?

A. Yes, sir.

Q. Faces west. And the entrance to the Rainfair plant faces east? Is that correct?

A. Yes, sir.

Q. Now, Jerry, you were brought up here by the Court to explain statements you made to the peace officers, Mr. Cobb and Mr. Shaw, about throwing these milk bottles and these glasses—this glass—our in Rowena Street, and out across where the cars park over in front of the Rainfair building. Did you throw this glass out there?

A. Yes, sir.

Q. About what time did you strew it out there?

A. Well, I wouldn't say exactly. It was before 7:00 o'clock, because we left to go to the show, and we didn't get up there quite—the show had already started when we got up there. It was around between 6:00 and 7:00.

Q. Between 6:00 and 7:00 What had you been doing that afternoon? Had you and Thomas been together?

A. He came down I believe that morning—I ain't for sure. But He had—Let me see. I think he come out there that morning. I don't know. I ain't quite sure. I think

he went home and then came back down there. We was [fol. 279] supposed to go to the show:

Q. Where did you eat supper?

A. I ate supper at home.

Q. At your house?

A. Yes, sir. And he went home then.

Q. And he went home and ate?

A. Yes, sir.

Q. Was that after you threw the glass?

A. No, sir; just before we went to the show. We had already eat supper, and then just went out and come to the tent they had there before they moved—just walking along—and we saw that bottle that was there and started throwing at it.

Q. As I understand it, you went home—Thomas went home and ate his supper, and you ate your supper?

A. Yes, sir.

Q. Then he came back down there? Is that correct?

A. Yes, sir.

Q. And you all walked over and looked at the tent?

A. Yes, sir; we walked out around that way—just talking at present, and we went around by the tent and close to a tree there—

Q. And then I believe you say you saw these bottles. What were they in there?

A. I think one of them was in a basket, and the other was in a box.

[fol. 280] Q. One was a basket and the other a box. Now, there was a large amount of bottles there? Is that right?

A. Yes, sir.

Q. They were sitting right in front of the Hambrick house, a little to the south, on the Hambrick lot? Is that right—on your daddy's lot?

A. No, sir; that don't belong to us, where they were sitting at.

Q. That don't belong to you. Who does it belong to? Mr. Bridges?

A. Yes, sir.

Q. Were the bottles in front of Mrs. Newby's trailer; I mean west of Mrs. Newby's trailer?

A. Yes, sir; close to the fence.

Q. Close to the fence. Between your property and the Bridges property, where the tent was? Is that correct?

A. Yes, sir.

Q. And that would throw those bottles sitting right opposite the Rainfair plant? Is that correct?

A. Yes, sir.

Q. Now, you knew that a picket line had been going up and down the street there until an injunction had been issued, didn't you? Did you know that?

A. I didn't know anything about an injunction. I knew about the picket line.

[fol. 281] Q. Well, you knew it had stopped, didn't you?

A. Yes, sir.

Q. Did you know why it had stopped?

A. No, sir.

Q. Didn't your daddy tell you why it was stopped?

A. No, sir.

Q. Didn't he tell you the Court stopped it?

A. I heard about the Court. I didn't know anything about what caused it to stop.

Q. Then you knew the reason it stopped was the Court stopped it?

A. No, sir.

Q. Don't let me lead you. If you don't know that, don't say it. Did you get information as to why it stopped?

A. No, sir.

Q. Now, did you—so when the picket line started and the tent was put right there next to your property you saw those people there every day, didn't you?

A. No, sir.

Q. And there was a large number of them there at various times? Is that correct?

A. Yes, sir.

Q. Did you hear them hollering across there at the workers as they would go and come?

A. Yes, sir.

[fol. 282] Q. And did you hear any name-calling?

A. I didn't hear none of the slang words, but they would holler at them.

Q. You heard them holler at them?

A. Yes, sir.

Q. Were you in that group that was hollering?

A. No, sir.

Q. Sir?

A. No.

Q. You never did get over there in with the group?

A. No, sir.

Q. Did you participate in the picket line at all? Did you walk down it with them?

A. No, sir. I stayed out there on the front porch and watched it is all.

Q. Your daddy was one of the strikers, wasn't he?

A. Yes, sir; the first one. He wasn't in the second one.

Q. He participated in the first strike?

A. Yes, sir.

Q. And didn't participate in the second strike? Is that right?

A. Yes, sir.

Q. Now, whose idea was it to strew all of this glass in the street, and strew it up there in that Rainfair place where they park their automobiles?

[fol. 283] A. It wasn't particularly none of us. Me and him just saw that bottle out there and started clunking at it, and kept missing it, and we just picked up bottles and started throwing. We didn't have anyone to suggest it. We just started throwing them.

Q. You mean to tell us here that you just got to throwing glass bottles out there in the street and over there on the Rainfair property? Is that right?

A. We didn't throw it over there on the street. We was standing in the yard when we throwed them over there--kind of right beside Mrs. Newby's trailer, and we was throwing at them. We didn't get over there far enough.

Q. Why didn't you throw them over in your yard when you were doing the throwing if you just wanted to be exercising your arm? Why didn't you throw them in front of where you live, and up that way?

A. I don't know.

Q. Huh?

A. I don't know.

Q. You haven't got any idea why you didn't do that. Or you could have turned around and thrown them on the lot

where the tent had been and where nobody traveled, while you were exercising your arm? You could have thrown them that way, couldn't you?

A. We could have, but we didn't think about it.

[fol. 284] Q. But you thought if you would throw them over on the Rainfair property where cars would drive in there, and throw them on the street where people were driving their cars up and down the street, it would puncture their tires, didn't you?

A. We didn't have any idea about that. We sure didn't.

Q. You mean to tell me you strewed this much glass up and down the road in front of the Rainfair Company and didn't give any thought at all about puncturing tires?

A. No, sir.

Q. What did you think it would do to them?

A. It would probably blow them out if it hit them right.

Q. Were you mad at those employees over there?

A. No, sir.

Q. And wanted to damage the tires of their cars?

A. No, sir.

Q. You didn't do that for that purpose?

A. No, sir.

Mr. Shaver: All right. That's all.

Cross-examination.

By Mr. Woods:

Q. Son, that tent was actually about as far as from here to the back of the courtroom there from your house, wasn't it? At least that far from your house?

A. About that far; yes, sir.

[fol. 285] Q. It is a pretty big vacant lot, isn't it?

A. Yes, sir.

Q. That is owned by a fellow named Bridges?

A. Yes, sir.

Q. And the trailer was pulled right up in your front yard? Isn't that right? Almost adjacent to your front porch? Isn't that right?

A. Well, yes, sir.

Q. How far away from your front porch would the trailer be? Would it be closer, or as far as from me to you?

A. Maybe from where I am at to that gate there.

Q. And the tubs with these bottles were right by the trailer? Is that right?

A. Yes, sir. Kind of like the trailer was right here, the bottles was right here (Indicating). The trailer was pointed this way, and the bottles would be up here.

Q. Now, actually the tent is right across from the entrance to the Rainfair Company, isn't it? Your house sits off at an angle from the Rainfair Company?

A. Yes, sir.

Q. Not directly across the street from it?

A. No, sir.

Q. Now, did your father tell you to throw these bottles over there?

A. No, sir.

[fol. 286] Q. Did he know you were doing that?

A. No, sir.

Q. Did any one know you were doing that?

A. No, sir.

Q. Or did anyone suggest it to you?

A. No, sir. Just me and him.

Q. It was your idea?

A. No, sir.

Q. I mean yours and his idea; not yours alone, but the two of your idea?

A. Yes, sir.

Q. Nobody suggested it and nobody knew you were doing it? Is that right?

A. No, sir.

Q. The bottles were on the Hambrick property; not on the Bridges property? Is that right?

A. It was on the Bridges property.

Q. Well, you say it was right by the trailer?

A. Well, the trailer is like this, and the box is sitting like this, right close to the fence. The fence don't belong to us; just where that trailer is that way, that belongs to us. There is a tree there, and this trailer was right at the side of the tree.

Q. It was right across the line. I take it the trailer was all on your property, wasn't it?

[fol. 287] A. Yes, sir.

Q. And the tub of bottles was close to the line between your property and the Bridges property?

A. Yes, sir.

Mr. Woods: I believe that's all.

Mr. Shaver: Nothing further.

The Court: You may go.

(Witness Excused).

LEE HAMBRICK, the next witness, after being first duly sworn, testified as follows:

Direct examination.

By Mr. Shaver:

Q. Your name is Mr. Lee Hambrick?

A. What is left of it.

Q. Mr. Hambrick, you live down there on Rowena Street right opposite, and east across the street from the Rain-fair Plant, do you?

A. Yes, sir.

Q. I believe you were one of the strikers?

A. Yes, sir.

Q. Is that right?

A. Yes, sir.

Q. And I believe that the first picket line thrown up down there, the headquarters were at your home?

[fol. 288] A. That's right.

Q. Is that correct?

A. That's right.

Q. And did you file charges against some of the young ladies down there when you were walking the picket line?

A. I sure did.

Q. That they tried to run over you while you were on the picket line?

A. Yes, sir.

Q. Did you dismiss those charges without any—

A. I certainly did.

Q. —Without trying them? Is that right?

A. Huh?

Q. Did you dismiss the charges without any trial?

A. I certainly did.

Q. And the picket line was withdrawn? Is that right?

A. That's right.

Q. And you never were re-employed?

A. No, sir.

Q. Then later on the CIO threw another picket line around the Rainfair plant, and that is the one involved in this case? Is that right?

A. Yes, sir.

Q. Now, did you participate in this—

A. No, sir.

[fol. 289] Q. —In this picket line?

A. No, sir.

Q. I thought you was one of the strikers. Why didn't you participate?

A. Because I had some other jobs to do.

Q. I didn't understand you.

A. I said I had some other work.

Q. You had other work to do and didn't participate?

A. That's right.

Q. Did they ask you to participate?

A. No, sir.

Q. Did the strikers?

A. No, sir.

Q. But they went out the first time and asked you to participate?

A. No, sir.

Q. They didn't?

A. No, sir.

Q. Do you recall that Mrs. Newby's trailer was sitting there in your yard?

A. Yes, sir.

Q. And she lived there, and she was one of the workers at the plant? Is that correct?

A. Yes, sir.

Q. Has she moved her trailer now?

[fol. 290] A. Yes, sir.

Q. Did you make her move the trailer?

A. I certainly did.

Q. Do you recall a bunch of milk bottles and other bottles on your property after the—

A. It wasn't on my property.

Q. They weren't on your property. Whose property was it on?

A. On Bridges'.

Q. But right at your line? Is that right?

A. Yes, sir.

Q. Whose bottles were those?

A. I don't know whose they were.

Q. Were they Mrs. Newby's?

A. I don't know.

Q. You just don't know?

A. No. I asked Mrs. Newby once whose bottles they was out there, and she said she didn't know whose they were. I said "I don't know whose they are either".

Q. You were out there on June 28th when the law was there, and Mr. Pete Bondry and myself picked up this glass?

A. Yes, sir; I was.

Q. Did you help pick it up?

A. Yes, sir; I did.

Q. Does this look like the glass picked up there and [fol. 291] put in a box.

A. If it ain't it's just like it.

Q. It looks like the glass?

A. Yes.

Q. Did you help pick up a considerable amount of glass in Rowena Street, and across from the Rainfair plant?

A. No, sir. I picked up some on the yard.

Q. But there was glass in Rowena Street? Is that right?

A. There was a little there.

Q. Was there glass over close to where automobiles park in the Rainfair property?

A. Yes.

Q. And about how far a distance—if somebody was throwing milk bottles, and glass like that, across there, about what distance would it be from where they were located to where they landed over there?

A. Oh, it might be twenty or thirty feet.

Q. Twenty or thirty feet. And then how wide is the parking lot going in from the east part of the building up

to Rewena Street? Two cars can park there, one here and one behind it, can't they?

A. They can, provided the end of one is off down in the ditch.

Q. They can approximately park there? Is that right?

A. Yes; that's right.

[fol. 292] Q. And did you notice some milk bottles on across the street that wasn't even broken? For instance, like this one?

A. No; I didn't see one like that.

Q. Now, you heard your son testify that he threw those bottles across there?

A. Yes; I heard him testify he did.

Q. Did you know he threw them across there?

A. No; I didn't know it until you—I didn't know it until the Chief come out there and brought me the warrant. That's the only time I knowed anything about it.

Q. You didn't tell him to do it, did you, Lee?

A. No; I did not. And if Pete had had the nerve he should have come over and told me about it and I would have done something about it. But he didn't. He come up here, and that's the first we knew about it.

Q. You were out there the next morning when we picked the bottles up.

A. I know. But I didn't know who throwed them out there.

Q. I didn't either. And Pete didn't either, did he?

A. Well, who had the papers sworn out?

Q. The Court.

A. He should have notified me something about it instead of waiting to the last minute to do it.

Q. Well, that is what I thought this hearing was about.

A. Yes; that's what it is about now. I said I didn't know [fol. 293] a thing about it until last Friday, I believe it was.

Q. You didn't know the bottles had been broken?

A. I knew the bottles had been broken. I said I didn't know anything about the Court.

Q. You didn't know anything about the Court. You knew there was an injunction out there, didn't you, issued to stop picketing that plant?

A. Yes; I knowed that. I said I didn't know nothing about these bottles.

The Court: You knew they were broken out there on the 28th, wasn't it?

A. I know it. But we didn't know ourselves about my boy being in it. They should have told me something about it.

The Court: Why should he ask you if your boy did something when the officers were there?

A. I should have been notified about it.

The Court: Well, you were notified, and you are here.

A. All right.

Q. Did you know—were you here sitting in this Court when they had the first hearing about this injunction?

A. Yes, sir.

Q. Were you here when this glass was offered in evidence?

A. Yes, sir.

Q. Did you hear the Court refuse to let me put it in evidence [fol. 234] at that time, and did you know the Court had turned the glass over to the peace officers and asked them to find out who did it? Did you know that?

A. Yes.

Q. And you didn't come up and volunteer to tell the peace officers about your boy doing it, did you?

A. No, sir; I didn't know nothing about it.

Q. You didn't know anything about it until—

A. I didn't know nothing about it until he give me the warrant.

Mr. Shaver: I believe that's all.

Cross-examination.

By Mr. Woods:

Q. Lee, during what we have been referring to here as the second picket line, the second strike, during that particular time you didn't have much contact with the union, did you?

A. I didn't have none at all.

Q. You kind of pulled out of it?

A. I sure did.

Q. You ceased whatever activities you had been engaged

in and, as a matter of fact, wouldn't permit them to come back in your yard?

A. That's right.

Q. And told them they would have to go somewhere else?

A. That's right.

[fol. 295] Q. You had just more or less broken off relations with the union so far as the second picket line was concerned?

A. That's right.

Mr. Woods: That's all.

Redirect examination.

By Mr. Shaver:

Q. Wait just a minute. Did I understand that you never were a member of the union? Were you?

Mr. Woods: What is that?

Q. I say you never were a member of the union, were you—the CIO Union?

A. Yes; I used to belong to it.

Q. At the time of the first picket line were you a member of the CIO Union here in Wynne?

A. No; I never was here. I was in California.

Q. You never were a member here in Wynne?

A. No.

Q. But you were one of the pickets? Is that right?

A. That's right.

Q. And they used your home for headquarters?

A. That's right.

Q. All right. Do I understand now you have completely severed your—all connections with it?

A. Yes, sir.

Q. And you don't now have anything to do with it?

[fol. 296] A. No, sir.

Q. And why?

A. Because I have got a job. I went to work. That's the reason I couldn't sit there. That wasn't my feeding.

Q. What?

A. They wasn't going to feed me; and I had to get out and make some money.

Mr. Shaver: That's all.

Recross-examination.

By Mr. Woods:

Q. Lee, All these people here, actually all they did was sign application cards for membership in the union?

A. That's right.

Q. And none of these strikers were actually members of the union, were they?

A. That's right.

Mr. Woods: I believe that's all.

Re-redirect examination.

By Mr. Shaver:

Q. I want to ask you one more question. Is this true or not: Did you tell me out there when we was talking that the reason you got out of the union was because they had tried to get you to do violence and destroy property.

A. I said some of them had tried, Mr. Shaver, and I [fol. 297] wouldn't do it.

Q. Wait a minute. What did you say?

A. You couldn't hear me?

Q. No, sir.

A. I said they did try to get me to, and I wouldn't do it.

Q. Who tried?

A. I didn't say who.

Q. I know you didn't say, but will you tell me now?

A. No, sir; I won't tell you now.

Q. Would you tell me whether it was some of the people who were on the picket line?

A. No, sir; I won't tell you that.

Q. You won't do that. Was it Mr. Youngdahl?

A. No, sir; I won't say that.

Q. You won't say—

A. You can call them all and ask them.

➤ The Court: I think you can answer the question, Mr. Hambrick. You may have this seat up here.

Q. Did Mr. Youngdahl try to get you to destroy any property?

The Court: Now, answer the question.

A. No, sir.

Q. All right. Now, I want to ask you to give the names of the people who were on the picket line; that is, that was involved in the strike?

A. It wasn't any of them.

[fol. 298] Q. Wait a minute. Name the people involved in the strike that tried to get you to destroy or damage property?

A. It wasn't anyone in the strike.

Q. Now, I want you to give the names of the people—period—who asked you to damage or destroy property; the Rainfair people, or the workers of the Rainfair Corporation?

A. Didn't anyone ask me to destroy none of the property.

Q. What did they ask you to do?

A. They wanted me to put snakes, and stuff like that, in there. They asked me to, but I wouldn't do it.

Q. Wait a minute. They wanted you to put snakes—

A. Yes.

Q. In the plant. You knew a snake was found in the plant, didn't you?

A. Yes.

Q. Did you put the snake in there?

A. No; I did not.

Q. Who was it wanted you to put a snake in there?

A. Well, he lives in Augusta now.

Q. The question is did you—you asked me, couldn't I hear you awhile ago. The question now, Mr. Hambrick, is who was it tried to get you to put a snake in the plant?

A. Well, it was—I can't think of that man's name.

Q. You can't think of his name?

A. No.

[fol. 299] Q. Now, what else did they try to get you to do?

A. That's all. I told you then it was all they was trying to get me to do.

Q. Put a snake in the plant?

A. Yes, sir.

Q. I see. Did they ask you to do anything else, like putting glass out in front on the highway?

A. No.

Q. Did they ask you to throw tacks, and did you participate in throwing tacks out there to puncture tires?

A. No; I did not.

Q. Do you know who did?

A. No, sir; I do not.

Q. Is that the reason you quit the union, on account of them asking you to do those things? Is that one of the reasons?

A. No, sir; it wasn't.

Mr. Shaver: I think that's all, your Honor.

Mr. Woods: That's all.

The Court: You may be excused.

(Witness Excused).

Mr. Woods: That's all we have, your Honor.

Respondents Rest

This Was All the Evidence Introduced at This Hearing.

The Court: I will take this under advisement, along with the other.

[fol. 300] Mr. Shaver: Your Honor; we would like to conclude our record. I would like for all of this to be a part of the record, since this development has come out, and since snakes were found in the plant, and this man has testified they tried to get him to do it, and he wouldn't do it.

Mr. Woods: Your Honor, I don't think this contempt proposition has any part in here.

The Court: I think it is all part of the same thing, Mr. Woods. It seems to me it is. We will let it all go into the record.

Mr. Woods: I would like then to note our objection.

The Court: You may do that.

Mr. Woods: And exception.

STATEMENTS OF COUNSEL

Stipulation.

Mr. Woods: It is stipulated that the persons named as Defendants in the original complaint asking for a temporary injunction would testify, if called, that they have no knowledge whatsoever of the incident involving bottles being

thrown on and around the Rainfair premises on June 28th; that none of them directed the said boys, the Cobb boy and the Hambrick boy, to throw said bottles on and around the Rainfair premises, and that they had no knowledge whatsoever of this incident until served with a citation herein.

Mr. Shaver: Now, your Honor, I believe the situation of the record is we ought to stipulate here that this proceeding shall be considered as a proceeding to modify or vacate or make permanent the injunction. You know that was what we talked about before.

The Court: I don't think *think* Mr. Woods is willing to stipulate the latter part of the testimony should be that. And he saves his exception to that.

Mr. Woods: Yes, sir; I am objecting to all the testimony taken today. But I think we stated in our stipulation the testimony we took on the first shall be considered by the Court.

Mr. Shaver: I want it all.

The Court: I know you do. But we can't stipulate it by agreement. He has saved his exception to the introduction of testimony taken with reference to the contempt proceedings being made a part of the record in the case.

Mr. Shaver: I would like to get it over with.

The Court: I have permitted it to be introduced. He saved his exception to that.

Mr. Woods: We can stipulate I am objecting to everything you have introduced here today. I am objecting to [fol. 302] all this testimony being introduced on the ground it hasn't been connected up with the defendant union.

The Court: All right. You all stipulate anything you can.

Mr. Shaver: It is stipulated that all testimony taken on July 1st, and all testimony taken on July 27th, shall be and become a part of this record, with the understanding that the Defendants object and except specifically to including the testimony taken in this cause on July 27th, 1955. And it is further stipulated that the hearings had on the above two days conclude the testimony of both parties, and may be considered in arriving at whether or not the injunction shall be vacated, modified, or made permanent.

[fol. 303] Reporter's Certificate to foregoing transcript omitted in printing.

[fol. 304] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

State of Arkansas Fifth Chancery District

CHANCELLOR'S CERTIFICATE—October 21, 1955

Now on this day come the Defendants in the aforementioned cause the present to the Chancellor trying said cause this, their Bill of Exceptions, and pray that the same be by the Chancellor approved, and made a part of the record herein.

And the Chancellor, after an examination of same, doth hereby approve said Bill of Exceptions, and doth order that the same be by the Clerk of this Court made a part of the record herein.

In Witness Whereof, I have hereunto set my hand this 21 day of October, 1955.

Fred Smith, Chancellor.

[fols. 305-306] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

NOTICE OF APPEAL—Filed September 3, 1955

The defendants, James E. Youngdahl, et al., hereby give notice of appeal to the Supreme Court of Arkansas from the Judgment rendered in favor of the plaintiff, Rainfair, Inc., in the above styled and numbered case on August 22, 1955.

Signed this 2nd day of September, 1955.

McMath, Leatherman & Woods, By Henry Woods,
Attorney for defendants.

Certificate of service (omitted in printing).

[File endorsement omitted.]

[fol. 307] IN THE CHANCERY COURT OF CROSS COUNTY,
ARKANSAS

[Title omitted]

NOTICE OF APPEAL—Filed September 24, 1955

The defendants, James E. Youngdahl, et al., hereby give notice of appeal to the Supreme Court of Arkansas from the Judgment rendered in favor of the plaintiff, Rainfair, Inc., in the above styled and numbered case and filed on September 16, 1955.

Signed this 23rd day of September, 1955.

McMath, Leatherman & Woods, By Henry Woods,
Attorneys for Defendants.

Certificate of service (omitted in printing).

[File endorsement omitted.]

[fols. 308-309] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 309-a] IN THE SUPREME COURT OF ARKANSAS

AFFIRMANCE—CHANCERY DISTRICT

STATE OF ARKANSAS,

In the Supreme Court, Set.:

Be It Remembered, That at a term of the Supreme Court of the State of Arkansas, begun and held at the Court House, in the City of Little Rock, on the 28th day, being the fourth Monday of November, A. D. 1955, amongst others, were the following proceedings, to wit: On the 19th day of March, A. D. 1956 a day of said term:

No. 884

JAMES E. YOUNGDAHL, et al., Appellants,

VS.

RAINFALL, INC., Appellee

Appeal From Cross Chancery Court — District

JUDGMENT—March 19, 1956

This Cause came on to be heard upon the transcript of the record of the Chancery Court of Cross County, District, and was argued by solicitors, on consideration whereof it is the opinion of the Court that there is no error in the proceedings and decree of said Chancery Court in this cause.

It Is Therefore Ordered and Decreed by the Court that the decree of said Chancery Court in this cause be and the same is hereby in all things affirmed with costs.

It Is Further Ordered and Decreed that said appellee recover of said appellants all its costs in this Court in this cause expended, and have execution thereof.

In Testimony, That the above is a true copy of the decree of said Supreme Court, rendered in the case therein stated, I, C. R. Stevenson, Clerk of said Supreme Court, herunto set my hand and affix the Seal of said Supreme Court, at my office in the City of Little Rock, this 16th day of July, A. D. 1956.

C. R. Stevenson, Clerk; Philip N. Gowen, D. C.

No. 884

JAMES E. YOUNGDAHL, et al. Appellants

v.

RAINFAIR, Inc., Appellee

Appeal from Cross Chancery Court.

Affirmed.

OPINION—March 19, 1956

MINOR W. MILLWEE, Associate Justice.

Appellee, Rainfair, Inc., is engaged in the manufacture of men's slacks in its plant at Wynne, Arkansas, where it employed approximately one hundred women and seven men in April, 1955. None of the employees were members of a labor union at that time but some of them had signed membership application cards with appellant, Amalgamated Clothing Workers of America, C. I. O., hereinafter called "Union." On Monday, May 2, 1955, twenty-nine employees failed to return to work and a picket line was established by the Union. Appellee's plant manager notified said employees by registered mail that it would be assumed that they were quitting their jobs if they did not return to work in three or four days. Three employees returned to work but twenty-six remained on strike and the picketing was continued until May 19, 1955, when the pickets were withdrawn and the strikers applied for reinstatement. In the meantime appellee had hired thirteen new employees and immediate reinstatement of the strikers was declined.

[Vol. 311] On June 17, 1955, the strikers met with several staff members of the Union at Forrest City, Arkansas, and voted to re-establish the picket line. In the meantime the Union filed alleged unfair labor practice charges against appellee before the National Labor Relations Board which were still pending at the time of the hearing in the instant case. The picket line was re-established about 6:00 a. m. of Monday, June 20, 1955, and on June 24 appellee filed the

instant suit against the Union and certain staff members and strikers, as a class, to enjoin them from picketing and the commission of certain acts of intimidation, violence, threats, abuse, insults and breaches of the peace allegedly committed by appellants along the picket line and upon Union premises directly across the street from appellee's plant.

On June 30 appellants filed a motion to vacate a temporary injunction issued on the date suit was filed. At the hearing held on said motion on July 1, it was agreed that the testimony there adduced would be considered on appellee's application for a permanent injunction. A citation for contempt against certain persons for violation of the temporary injunction was dismissed after a hearing on July 27. The chancellor took the case under advisement and this appeal is from a decree entered September 15, 1955, making the temporary injunction permanent.

Appellants contend the decree violates their rights of free speech and assembly under the U. S. and Arkansas Constitutions; that there was no showing that the picketing [fol. 312] resulted in violence, breaches of the peace or other unlawful acts; that the language used by the strikers along the picket line is common in all labor disputes; and that the regulation of the subject matter of the suit is exclusively reserved to the National Labor Relations Board. In the light of these and other contentions we proceed to an examination of the evidence which is for the most part undisputed.

While the pleadings and testimony were directed primarily to incidents which occurred during the second picketing, there was evidence that some of them were merely a resumption of the pattern set in the first picketing. The plant manager was followed by the strikers every time he left the plant in his car. One of the pickets told him she was going to wipe the sidewalks clean with him and send him back to Wisconsin. He had so many anonymous telephone calls at his home after 9:00 p. m. that he had to have the phone disconnected. Nails and roofing tacks were strewn over the parking area of appellee's plant and the driveways at the homes of the plant manager and twelve of the women employees.

When the picketing was resumed on June 20, 1955, the Union rented a vacant lot directly across Rowena Street from the main entrance to appellee's plant. The street runs north and south and is about twenty feet wide. Appellants placed a tent on the lot in which they installed a telephone, tables, benches and chairs and the lot was used as head-[fol. 313] quarters for the strikers. One of appellee's employees, Mrs. Jewell Newby, lived in a trailer next to the Union lot and within a few feet of their tent. About 12:30 a. m. on June 20, she observed two women strikers driving up and down Rowena Street who had previously threatened to move her trailer and whip her. The strikers then parked their truck near the trailer and punctured two tires on an automobile belonging to Mrs. Newby's daughter who was visiting her at the time. The two strikers were arrested and convicted on criminal charges preferred by Mrs. Newby. About five o'clock on the same morning a window of appellee's plant was found to have been broken and a black snake about five feet long was found coiled inside the plant under the broken window.

The picketing was resumed about 6:00 a. m. on June 20 with usually one or two carrying signs up and down Rowena Street in front of the plant. Other Union staff members, strikers and their sympathizers would assemble under and around the tent in groups estimated at different times from eight to thirty-seven. As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the west edge of their lot and sometimes in Rowena Street and engage in loud and offensive name calling, singing or shouting directed at the workers. They would call the workers "scabs," "dirty scabs," "fat scabs," "yellow scabs," "crazy scabs," "cotton patch scabs," "pony tailed scabs," "fuzzy headed scabs," "fools," "cotton picking fools," and other similar names. This took place every time an employee left or entered the plant. It was done by the strikers individually, in couples or by the entire group and in a loud and boister-[fol. 314] ous manner. One witness described it as "just bedlam" when more than a dozen joined in the shouting. Particular names or remarks were reserved for individual workers. One pregnant worker was greeted with, "Get the

hot water ready," or, "I am coming to make another payment on the baby, call Dr. Beaton," or, "Why, you can work another hour until you go to the delivery room." This worker and another drove to a filling station for gasoline when two of the strikers drove up and told the attendant not to wait on "these scabs" before he waited on the strikers.

One worker said the strikers always called her "fat scab," and that individual pickets and strikers made fun of her clothing and asked her if "Pete", the plant manager, still liked her "low-cut dresses and earrings." This made the employee so angry she invited the picket to come over and "make it some of her business." This worker thought she had a right to work without being molested and insulted because she had two boys to support. On one occasion two strikers drove by a house where two workers were visiting and one of the strikers shouted, "You gals better check your sheets tonight. There might be a snake in them."

The strikers sang songs with improvised lyrics to the tune of certain popular ballads and religious and Union songs. "When The Saints Go Marching In" became "When The Scabs Go Marching In" and the ballad, "Davy Crockett", began, "Born in a cotton patch in Arkansas, the greenest gals we ever saw . . ."

The women pickets would stand in the street or sit near the plant and shout ugly names, stick out their tongues, hold their noses and make a variety of indecent gestures while [fol. 315] pointing at the workers in the plant. Several workers testified the continuous name calling and boisterous conduct of the strikers made them afraid, angry, ill or nervous and had an adverse effect on their ability to properly do their work. Some of the workers would talk back to the strikers while others remained silent. The Chief of Police of Wynne testified there was more tension during the second picketing than the first and that he was fearful there was going to be trouble during the second picketing and so informed Union staff members. One staff member called him once when trouble seemed imminent and wanted to "go on record" as having requested the presence of the officer.

The Assistant Regional Director of the Union testified

that the purpose of the second picketing was to exert "moral pressure" on the workers and because of certain unfair labor practices of appellee. While the Union had an action pending before the National Labor Relations Board on account of such alleged practices, he expressed an unwillingness to await the Board's action before proceeding with the trial of the instant suit. The principal complaint was asserted to be appellee's refusal to recognize Union's offer of proof of majority status; but it was admitted that Union was unwilling to go into an election and had withdrawn its request therefor at the time of the hearing. The assistant director and other staff members considered it insulting to be called a "scab" but they felt that others might look upon it as a "badge of honor".

[fol. 316] In support of their numerous contentions that the decree appealed from is in violation of their constitutional rights, and that the picketing involved here was legal and peaceable, appellants rely upon such cases as *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Carlson v. California*, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104; *Cafeteria Employees v. Angeles*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58; *Bakery & Pastry Drivers v. Wohl*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178; *Local No. 802 v. Asimos*, 216 Ark. 694, 227 S. W. 2d. 154; and *Boyd v. Dodge*, 217 Ark. 919, 234 S. W. 2d. 204. In urging the opposite view, appellee cites and relies upon *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312 U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 13 A. L. R. 1200; *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154; *Hughes v. Superior Court of California*, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985; *Local Union No. 13 v. Stathakis*, 135 Ark. 86, 205 S. W. 450; *Riggs v. Tucker Duck & Rubber Company*, 196 Ark. 571, 119 S. W. 2d. 507; and *Smith v. F & C Engineering Company*, Law Rep. Vol. 100, No. 3, 285 S. W. 2d. 100. It would serve no useful purpose to differentiate the factual situation presented in the instant case from any of the cases cited above. The whole issue here would seem to boil down to whether the appellants were engaged in peaceful picketing. If so, the court wrongfully issued the injunction. If not, the decree should be affirmed. All the cases seem to agree that

workers have the constitutional right to engage in peaceful picketing, unattended with violent conduct, but that picketing [fol. 317] ing carried on with intimidation, threats, violence, coercion or other unlawful means is illegal and may be enjoined.

A constitutional right to abuse, insult, slander or intimidate others is simply nonexistent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others. As the court said in *Chaplinsky v. State of New Hampshire*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031: "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene; the profane, the libelous, and the insulting or 'fighting' words—those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. 'Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U. S. 296, 309, 310, 60 S. Ct. 900, 906, 84 L. Ed. 1213, [fol. 318] 128 A. L. R. 1252." It has long been a violation of the criminal laws of this state for any person to "... make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptance is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault . . ." Ark. Stats. Sec. 41-1412.

The words of Judge Eder in *Lilly Dache, Inc. v. Rose*, 28 N. Y. S. 2d. 303 are peculiarly applicable here: "There

is nothing mysterious in the term 'peaceable picketing.' To picket is to post a watcher to observe; as applied to a labor dispute it means the stationing of one or more persons to observe and to attempt to persuade; peaceable picketing means simply, tranquil conduct, conduct devoid of noise or tumult, the absence of a quarrelsome demeanor, a course of conduct that does not violate or disturb the public peace; this is but a common-sense definition. As a necessary corollary, boisterous conduct, the use of vile language, bellicose demeanor, threats, violence, coercion, intimidation, shouting, and interference with the use of the premises or impeding the public highway, as by mass picketing, which is the use of a large number of pickets, is not peaceable picketing, but is illegal picketing."

"It is true that an injunction prohibiting all picketing may [fol. 319] not be based upon isolated and episodic acts of violence or other unlawful conduct. Even if it be conceded

that the acts of violence involved here fall in that category, there was nothing isolated nor infrequent about the per-

sistent abuse, insults and epithets along the picket line. Many jurisdictions have authorized such injunctions where the strikers' acts and conduct have been so entangled with violence and other illegal conduct that future excesses might reasonably be anticipated in the light of what was previously done. See cases collected in 132 A. L. R. 1218. According to the undisputed evidence here, the whole pattern of conduct along the picket line discloses a clear design on the part of the appellants to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results. It is difficult to understand how any court could classify such conduct as "peaceful picketing."

While the question of jurisdiction was not raised below and appellants expressed an unwillingness to await the action of the National Labor Relations Board on their charges of unfair labor practices against appellee before proceeding with the trial of the instant case, it is now earnestly contended that chancery court lacked jurisdiction which is exclusively reserved to the N. L. R. B. under federal statutes. Appellants rely on *Garner v. Teamsters Local 776*, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, and

Weber v. Anheuser Busch, 348 U. S. 468, 75 S. Ct. 480, 99 L. Ed. 386. The facts in these cases bear little similarity to those involved here, and we find nothing to indicate an intention to supplant or overrule the doctrine of *Allen-Bradley Local v. Wisconsin Employment Relations Board*, [fol. 320] *supra*, where it was held that the state may still exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. In the *Garner* case the court was careful to point out that the activity there enjoined did not threaten a probable breach of the state's peace. In *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 651, the court said: "While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal—even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states." See also, *Amalgamated Clothing Workers of America, et al. v. The Rickman Brothers*, 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed. 690; *National Labor Relations Board v. Longview Furniture Company*, 296 Fed. 2d. 274.

We realize that the U. S. Supreme Court is the final arbiter as to the extent the different federal acts have affected the traditional state jurisdiction to enjoin picketing by unlawful means or for illegal purposes. So far the state courts have been unanimous in holding that the National Labor Relations Act does not preclude them from granting injunctive relief against picketing in a manner that is unlawful under state law. See cases collected in 36 A. L. R. 2d. 1037. Until otherwise told, we shall assume that it was not the purpose of the federal act to deprive a state court of its ancient jurisdiction in such matters.

The decree is affirmed.

[fol. 321] [File endorsement omitted]

IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

PETITION FOR REHEARING—Filed April 3, 1956

Comes now the appellants by their attorneys, McMath, Leatherman and Woods and William J. Isaacson and petition the Honorable Supreme Court for rehearing in the above captioned matter, and as grounds for their petition state:

(a) The incidents occurring in the course of the first picketing should not have been considered by the Court in arriving at its decision. The first picketing involved different issues, different personnel, and was in a large measure unrelated to the second picketing. The first picketing continued for 17 days, from May 2nd to May 19th, with no attempt being made by Rainfair, Inc., to secure an injunction against appellants. Apparently Rainfair did not regard this picketing to be subject to restraint. The complaint makes no allegation regarding incidents occurring during the first picketing and is confined wholly and solely to the second picket line. The opinion states that the principal complaint of the strikers was the appellee's refusal to recognize the union's proof of majority status. This was the reason for the first picketing; the second picketing was to protest the unfair labor practices of the company in refusing to reinstate the strikers and to secure recognition.

(b) The decision of the Court bases the affirmance of the Chancellor's decree upon the strikers' conduct at the picket line—the purported insults and epithets from the strikers. [fol. 322] Such a basis for the decision makes it distinctly contra to *Cafeteria Employees v. Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58, where the pickets were admittedly "insulting" customers, yet the injunction was struck down as being in violation of the 14th amendment. The decision equates words spoken on the picket line with "violence." A court may not enjoin picketing, because of the inhibitions of the 14th amendment, unless such picketing is set in a

background of violence, and unless the violence is of the very texture of the picketing. The Court in its decision has allowed a picket line to be enjoined because of the billingsgate, common to all strike situations. Such a far reaching decision is a serious curtailment of the right of labor to organize.

(c) The decision places its principal reliance on *Chaplinsky v. N. H.*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031. It gives to that decision a broad interpretation unwarranted by the facts and the language of the Supreme Court of the United States. *Chaplinsky v. N. H.* involved a violation of the following statute:

"No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation."

After discussing the construction given this statute by the Supreme Court of N. H., the Supreme Court of the United States says:

[fol. 323] "The statute, as construed, does no more than prohibit the face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speaker—including 'classical fighting words', words in current use less 'classical', but equally likely to cause violence, and other disorderly words, including profanity, obscenity, and threats."

In the instant case, we fail to see where any so-called "fighting words" were used. The word at which the appellee took umbrage was the word "scab", which is a recognized English word used everywhere to describe a person who crosses a picket line. The words involved in *Chaplinsky v. N. H.* were as follows:

"You are a God-damned racketeer and a damned Fascist, and the whole government of Rochester are Fascists or agents of Fascists."

These words were not only profane, but actually libelous. In the case at bar, we do not believe that any of the words used were either profane or libelous.

(d) Although the Court disposed of the appellants' contention that their freedom of speech, under the 14th Amendment, had been interdicted, the Court gave no consideration to the appellants' contention that their freedom of assembly had been unlawfully abridged. Freedom of Assembly is just as important as the right of Freedom of Speech. The injunction issued by the learned Chancellor prevents the appellants from holding peaceful meetings on their own property. The impairment of such a constitutional right, in our judgment, is worthy of great consideration by this Court.

(e) Although the Court cited the Supreme Court decision in *Weber v. Annecauser-Busch*, it did not consider an important aspect of that opinion, although that aspect was [fol. 324] clearly drawn to the Court's attention both in the brief and oral argument. Specifically, the *Weber* opinion, in its closing paragraph, holds that even though a state court may exercise jurisdiction with reference to violence, its jurisdiction is restricted only to the violence, and it may not exercise jurisdiction over the peaceful picketing, and consequently may not enjoin the peaceful picketing. In short, peaceful picketing is not drawn within the jurisdiction of the state court because there may also be an allegation and proof of violence.

Respectfully submitted, McMath, Leatherman & Woods and William J. Isaacson, attorneys for appellants.

CERTIFICATE

Comes now Henry Woods, one of the attorneys for the petitioners herein, and certifies his belief that there is merit in the above and foregoing petition, and that it is not filed for the purpose of delay. He further certifies that a copy of the petition has been served on Shaver and Shaver, attorneys for the appellee, by mailing a copy of said petition to them on the 3rd day of April, 1956.

(S.) Henry Woods.

[fol. 325] IN THE SUPREME COURT OF ARKANSAS

[Title omitted]

ORDER DENYING REHEARING—April 23, 1956.

The petition for rehearing filed herein is denied.

[fol. 326] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 327] SUPREME COURT OF THE UNITED STATES, October Term, 1956

No. 269

[Title omitted]

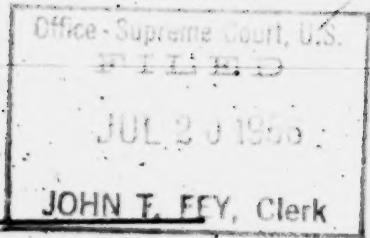
ORDER ALLOWING CERTIORARI—Filed October 8, 1956

The petition herein for a writ of certiorari to the Supreme Court of the State of Arkansas is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(3855-4)

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SUPREME COURT, U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

JAMES E. YOUNGDAHL, W. CHANDLER,
RUTH RALPH, AMALGAMATED
CLOTHING WORKERS OF AMERICA,
CIO, NORMA COBB, HAZEL KENNEDY,
PAULINE MIDGETT, LOIS MORRISON,
MILDRED TACKER, FLORENCE ROBERTS
AND PAULINE WALDREP

Petitioners

v.

No. ~~200~~ //

RAINFAIR, INC.

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

SIDNEY S. McMATH
LELAND F. LEATHERMAN
HENRY WOODS

C/O McMATH, LEATHERMAN & WOODS
417 National Old Line Building
Little Rock, Arkansas

WILLIAM J. ISAACSON
15 Union Square
New York 3, New York
Attorneys for Petitioners

July 18, 1956

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

JAMES E. YOUNGDAHL, W. CHANDLER,

RUTH RALPH, AMALGAMATED

CLOTHING WORKERS OF AMERICA,

CIO, NORMA COBB, HAZEL KENNEDY,

PAULINE MIDGETT, LOIS MORRISON,

MILDRED TACKER, FLORENCE ROBERTS

AND PAULINE WALDREP

Petitioners

v.

No.

RAINFAIR, INC.

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

James E. Youngdahl, W. Chandler, Ruth Ralph, the Amalgamated Clothing Workers of America, CIO, Norma Cobb, Hazel Kennedy, Pauline Midgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrep, petitioners, pray the court to issue a writ of certiorari to review the decision of the Supreme Court of Arkansas in the above entitled cause, and the order denying the petition for rehearing therein, and, for cause, show:

OPINIONS OF COURTS BELOW

The temporary injunction issued by the Chancery Court of Cross County, Arkansas, is set forth in the appendix, page i. The permanent injunction decree, issued by the Chancery Court of Cross County on the 15th of September, 1955, is set forth in the appendix, page v. The decision of the Supreme Court of Arkansas affirming the decree of the Chancery Court of Cross County, Arkansas, is not yet reported in the official reports, but appears in the unofficial reports in 288 S. W. (2d) 589. A copy of said decision appears in the appendix at pages ix to xxi. The petition for rehearing in the Supreme Court of Arkansas was filed on April 3, 1956. A copy of said petition appears in the appendix at pages xxii to xvi. Rehearing was denied by the Supreme Court of Arkansas on April 23, 1956.

JURISDICTION

The decision of the Arkansas Supreme Court affirming the decision of the Cross County Chancery Court was rendered on March 19, 1956.

The date of the order denying the petition for rehearing was April 23, 1956.

The statutory provision believed to confer on this Court jurisdiction to review the decision and order of affirmance of the Supreme Court of Arkansas by writ of certiorari is Title 28, USCA, Section 1257 (3). This statute has been amplified

by that part of Rule 19 (a) of this Court which provides that this Court will, in considering the question whether it should grant a review on writ of certiorari, consider cases in which

"a state court has decided a federal question of substance not theretofore determined by this Court or has decided it in a way probably not in accord with applicable decisions of this Court."

QUESTIONS PRESENTED FOR REVIEW

The questions presented are as follows:

(1) Whether the injunction decree issued by the Chancery Court of Cross County, Arkansas, and affirmed by the Supreme Court of Arkansas deprived petitioners of their freedom to picket guaranteed them under the Fourteenth Amendment to the Constitution of the United States, since there was no showing that the picketing enjoined was set in a background of violence or was for an unlawful purpose.

(2) Whether the injunction decree issued by the Chancery Court of Cross County, Arkansas, and affirmed by the Supreme Court of Arkansas deprived petitioners of their freedom of speech guaranteed them under the Fourteenth Amendment to the Constitution of the United States, since petitioners were enjoined from dissuading persons from patronizing, or working for respon-

dent, or calling attention to any alleged unfairness of respondent to organized labor.

(3) Whether the injunction decree issued by the Chancery Court of Cross County, Arkansas, and affirmed by the Supreme Court of Arkansas deprived petitioners of their freedom of assembly guaranteed them under the Fourteenth Amendment to the Constitution of the United States, since the decree enjoined petitioners from meeting or congregating on their own property.

(4) Whether a state court, which has found picketing to be free of violence but "coercive and abusive" and "designed to cause a breach of the peace," has jurisdiction to enjoin all picketing, including wholly peaceful picketing, where the labor dispute and the parties thereto are subject to the jurisdiction of the National Labor Relations Board.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional provisions involved herein are Section One of the Fourteenth Amendment to the Constitution of the United States and Section Two of Article Six of the Constitution of the United States. These are set forth in the appendix at page xxvii. The statutory provisions involved are Sections 7, 8, and 10 of the Taft Hartley Act (29 USCA 157, 158, and 160). These sections are set forth in the appendix at pages xxviii through xxxvi.

STATEMENT OF THE CASE

Rainfair, Inc., respondent, is engaged in the manufacture of men's clothing with plants in Wynne, Arkansas, and Racine, Wisconsin. At Wynne, Rainfair, employing approximately 107 employees, manufactures between 2,500 and 3,500 pairs of pants weekly, all of which are shipped to Wisconsin. The workers in the Wisconsin plant are represented by a union, but there is no union representation at the Wynne plant.

On or about May 2, 1955, the Amalgamated Clothing Workers of America, AFL-CIO, (hereafter referred to as the "Union") made an offer of proof to Rainfair that it represented a majority of the employees in the Wynne plant and requested recognition. Rainfair refused. Thereupon, on May 2, twenty-six employees walked out on strike.

The plant was picketed peacefully for about three weeks, when the pickets withdrew and all of the strikers applied for reinstatement. Rainfair refused to take them back, despite the fact that the lack of experienced personnel had hampered production and despite the fact that it had less than its full complement of workers.

Thereupon, the Union filed unfair labor practice charges against Rainfair with the National Labor Relations Board, charging Rainfair with a refusal to bargain collectively and with illegal

discrimination in refusing to reinstate the strikers. Because of what they considered to be the continuing unfair labor practices of Rainfair, the strikers met on June 17th and voted to re-establish the picket lines. Accordingly, the picket line was re-established on the morning of June 20th. On the night before the picket line was re-established, according to the testimony of one of the Company's employees, two of the striking employees punctured the tires of her daughter's automobile with an ice pick. They were convicted in the Justice Court at Wynne and appealed their convictions to the Circuit Court. Later that same night an unknown person or persons smashed a plant window and threw a snake into the plant.

From the time the picketing commenced on June 20th until it was ended by the temporary restraining order, there has been no violence or destruction of property.

The Union used from one to two pickets to patrol each of the roads bordering the company premises. They carried signs reading:

"Rainfair Workers on Strike, Rainfair is unfair to its employees. Amalgamated Clothing Workers of America, CIO."

The Union also leased a vacant lot as strike headquarters directly across from the plant. The striking employees erected a tent on this site which was used to serve meals, furnish relief to

the pickets, etc. The Union posted a sign requesting the strikers not to engage in any violence or other illegal activity. Union meetings were held at these headquarters. While the picketing was in progress, it was the custom of a number of the strikers to gather in and around the tent. According to the Union's witnesses, the number averaged from four to eight persons; the company's witnesses placed the figure somewhat higher.

The strikers, standing across the road from the plant on their property, orally tried to dissuade persons from entering the plant. When employees of the company went to and from work, the strikers called them "scabs", with such variations as "fat scabs", "pony-tailed scabs" and "yellow scabs". One employee also testified that the strikers made fun of her pregnancy. There was no physical violence on the picket line and no evidence of threats of physical violence. Company witnesses merely testified that the strikers talked loud, jeered and shouted at them. Some of the company witnesses testified they were "bothered" by the talk but that they continued to work and cross the picket line. The plant manager stated that strikers followed him in their automobile to harass him and that he also received anonymous phone calls. The Union officials denied any knowledge of such conduct.

Upon complaint of the Rainfair Company, a temporary restraining order was issued on June

24th, restraining, among other things, all picketing by defendants, all congregating on the union premises across from the plant and all contact by defendants with Rainfair employees or customers at or near the company premises.

A motion to vacate this temporary injunction was filed by the petitioners on June 30, 1955. Among other grounds urged in the motion to vacate was that the injunction violated the Fourteenth Amendment. It was also urged in the motion to vacate the injunction that the picketing was not for any illegal purpose but was to secure recognition of the Union and secure redress for continuing unfair labor practices.

On July 1, 1955, a hearing was held on the motion to vacate the temporary injunction and the matter was taken under advisement by the Chancellor. It was stipulated at that hearing that the testimony adduced would be considered on the application for a permanent injunction. The injunction was made permanent on September 15, 1955, and the petitioners duly perfected their appeal to the Supreme Court of Arkansas urging, among other contentions, that the decree violated their freedom to picket, freedom of speech, and freedom of assembly, under the Fourteenth Amendment to the Constitution of the United States. It was also urged that the regulation of the subject matter of the case was exclusively reserved to the National Labor Relations Board.

(See the decision of the Supreme Court of Arkansas, appendix page ix.) The Supreme Court of Arkansas affirmed the decree of the Chancery Court of Cross County on March 19, 1956. The petition for rehearing was filed by petitioners on April 3, 1956. In said petition for rehearing the petitioners urged that the Supreme Court of Arkansas should grant rehearing because their decision was contra to the decision of this Court in *Cafeteria Employees v. Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58, where the pickets were admittedly insulting customers, yet the injunction was struck down as being in violation of the Fourteenth Amendment. It was also urged that the Supreme Court of Arkansas had given a broader interpretation to *Chaplinsky v. New Hampshire*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031, than was warranted by the facts and language of this Court, and it was further urged that the Supreme Court of Arkansas had not given consideration to the petitioners' contention that their freedom of assembly had been violated by the injunction decree. It was also argued that the Supreme Court of Arkansas did not consider an important aspect of *Weber v. Anheuser-Busch* which, in its closing paragraph, held that even though a state court may exercise jurisdiction with reference to violence, its jurisdiction is re-

stricted only to violence, and it may not exercise jurisdiction over peaceful picketing. The petition for rehearing was denied on April 23, 1956.

ARGUMENT

A. *The injunction violates the constitutional right of peaceful picketing.*

Both the temporary and permanent injunctions enjoin defendants and their sympathizers:

"While on, adjacent to, or near plaintiff's premises located on Martin Drive and Rowena Street, in Wynne, Arkansas, from interfering with plaintiff's business, its customers and employees, and from picketing or patrolling, or causing to be picketed or patrolled, the plaintiff's premises, and the sidewalks, streets or other property adjacent to plaintiff's premises with placards or banners designating said place of business as unfair to organized labor, or with placards otherwise so worded as to give said place of business such designation."

This sweeping language stops all picketing of the plaintiff's premises, whether such picketing be peaceful or not. If permitted to stand, it would create a precedent whereby labor may be deprived of the constitutional right of peaceful picketing, a right clearly enunciated and heretofore carefully preserved by this Court.

Peaceful picketing is a form of communication protected under the Fourteenth Amendment to the Constitution of the United States and may be limited only in specific situations. *Thornhill v. Alabama*, 310 U. S. 88, 84 L. Ed. 855, 6 U. S. Ct. 736. Whereas here, the injunction is predicated upon the manner in which the picketing is conducted, rather than its objective, a ban on all picketing is permissible only where the picketing is "emeshed with contemporaneously violent conduct." *Milkwagon Drivers v. Meadowmoor Dairies*, 312 U. S. 287 (1941), 8 Ct. L. Ed. 836, 61 S. Ct. 552. The opinion in the *Meadowmoor* case demonstrates the extent of violence necessary to justify an injunction which extends even to peaceful picketing.

"Beside peaceful picketing of the store handling Meadowmoor's products, the master found that there had been violence on a considerable scale. Witnesses testified to more than fifty instances of window-smashing; explosive bombs caused substantial injury to the plants of Meadowmoor and another dairy using the vendor system and to five stores; stench bombs were dropped in five stores; three trucks of vendors were wrecked, seriously injuring one driver, and another was driven into a river; two trucks of the vendors were burned; a storekeeper and a truck driver were severely beaten;

workers at a dairy which, like Meadowmoor, used the vendor system were held with guns and severely beaten about the head while being told 'to join the union'; carloads of men followed vendors' trucks, shot at the truck and driver. In more than a dozen of these occurrences, involving wrecking of trucks, shootings, and beatings, there was testimony to identify the wrong-doers as union men."

After setting forth these facts this Court said: The picketing in this case was set in a background of violence . . . acts of violence are neither episodic nor isolated."

This Court, in discussing the Meadowmoor case said:

"Right to free speech in the future cannot be forfeited because of disassociated acts of past violence (citation omitted). Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing." *Cafeteria Employes v. Angelos*, (1943), 320 U. S. 293, 88 L. Ed. 58, 64 S. Ct. 126.

The *Angelos* case, involving an injunction based largely on insults to customers about to enter the employer's premises, makes clear that

mere verbal abuse is not a sufficient basis on which to base a ruling removing picketing from the protection of the 14th Amendment. Yet the injunction in the instant case is based on "verbal abuse."

In examining the evidence, we are met at the outset by the incontrovertible fact that *there was no evidence of violence connected with the picketing in the instant case*. The only allegations of incidents of violence had to do with two isolated incidents or minor property damage, which occurred before the picket line was established. The following testimony of Peter A. Bonady, the plant manager, is pertinent:

"Q. Now, Mr. Bonady, when the picket line was thrown up the second time, do you know of any actual incidents that have occurred out there in connection with the picket line?

A. You are talking about physical violence? Is that what you call violence?

Q. Yes, physical violence.

A. I have never observed anybody.

Q. You have never observed any physical violence? It's all been of an oral nature?

A. Sir?

Q. I mean there has been some talking back and forth. Everything has been oral

and nothing has been physical? Is that what you are saying? There hasn't been anything physical?

A. I just said that I haven't observed any physical violence." (T. 196-197)

The following testimony of Mr. Cobb, Chief of Police, is also important on this question:

"Q. Now, Chief, you don't know of any actual violence having occurred down there, do you? Do you know any?

A. No, sir, we have had none." (T. 237)

In fact, as far as the pickets are concerned, there is no testimony that any of them did anything other than *walk* up and down the two streets adjoining the plaintiff's factory. So far as they are concerned, there is no testimony that any of them even so much as talked to anyone while on the picket line. The singing, the talk and the alleged abusive language came from the strikers who were gathered on their own property across the road from the Rainfair Company.

The only violence whatsoever, the "tire puncturing" and "snake" incidents occurred before the picketing commenced and were entirely disassociated from it. They were such incidents as this Court had in mind in the *Meadowmoor* case when it stated:

"Right of free speech in the future cannot

be forfeited because of disassociated acts of past violence."

Nor was the strikers' shouting from their own property across the road from respondent's plant of such a character as to so taint the picketing that it may be enjoined in toto. As speech, the strikers attempt to persuade their fellow employees to join with them is protected by the 14th Amendment. This phase of the case will be discussed below under subsection (B).

B. The injunction violates the constitutional right of freedom of speech.

The right of free speech is an even broader right than freedom to picket, and this Court has guarded it jealously.

Yet, it was the speech and language of defendants that the plaintiff sought to control by this injunction. Rainfair objected to what the defendants said while they were on their own premises, the songs they sang, the conversation they had with the people coming into the Rainfair plant. As a matter of fact, the principal bone of contention herein was the fact that the strikers called the Rainfair employees "scabs" and tried orally to dissuade people from entering the plant. There can be no doubt that the injunction completely and effectively interdicts the strikers' freedom of speech, for in both the temporary and permanent injunctions the strikers are enjoined:

"From accosting and detaining, or causing to be accosted or to be detained on the sidewalks or streets adjacent to or on plaintiff's premises, any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing, or working for plaintiff, or from calling attention to any alleged unfairness of plaintiff, or its place of business, to organized labor."

It is pertinent at this point to discuss in detail just what the strikers were saying. A large part of the testimony dealt with this phase of the case. The union officials testified that the strikers sang union songs, they freely admitted that the company employees were called "scabs," and that attempts were made to dissuade people through speech from entering the plant.

Let us examine closely, however, the testimony of the company's witnesses on this point. The testimony of Charlie Ford is particularly significant, (T. 118), since he was the only witness, with the exception of the Chief of Police, who had no direct interest in the controversy. His testimony showed that he was strongly anti-union and very much prejudiced against the strikers. Yet, this is his testimony as to what was said to him when he left the plant:

"I left the plant, went out into the road and

I was told that — asked if I took a job. They told me that they worked people there pretty hard on the sewing machines. They would only be paid seventy-five cents an hour, and I told the persons because I felt like I had taken it up that I was a citizen of this community and then — in other words, it is my responsibility being a citizen that I ought to be as good a citizen as possible and I feel the same way about the strikers, that they have a responsibility toward this community the same as I do as a citizen whether I have business down there or not. So I told them that I already had a job, that I wasn't there seeking a job, and I was well satisfied with the job that I had and that is about the context of my talk, and I got in my car and I left. Nobody tried to stop me or molest me in any way." (T. 118).

This testimony is most significant; it shows that the strikers were doing nothing more than telling Mr. Ford their side of the dispute.

In addition to the attempts of the strikers to persuade persons not to enter the Rainfair plant or do business with it, the strikers called the workers who crossed the picket line to enter the plant "scabs" with many variations of the term such as "fat scabs," "yellow scabs," "crazy scabs," etc. They also made fun of one worker's pregnancy, and indulged in some talk about the man-

ager of the plant liking low cut dresses and earrings. It was this type of talk which had great influence on the Supreme Court of Arkansas' decision, and which formed the main basis for such decision. The Supreme Court of Arkansas considered this language abusive, coercive, insulting, and calculated to cause breaches of the peace. The petitioners contend that this type of language is the billingsgate common to all strike situations. If picket lines are to be enjoined simply because the word "scab" is used, it will be virtually impossible to maintain a picket line. Rarely has a plant been picketed without non-striking employees being called "scab" by strikers.

These women were not products of finishing schools, but were wives and daughters of eastern Arkansas sharecroppers — with limited education and social backgrounds. They were fighting for a right to organize in a section of Arkansas that is notoriously hostile to organized labor. They were trying to lift their wages above the 75 cents per hour being paid at Wynne in comparison to the \$2.25 an hour being paid in Racine, Wisconsin, by the same company. In making this fight, against great odds, some of these women used the only weapons at their command — jeers and ridicule.

Although some of their statements were in bad taste, there was very little profanity or even obscenity. Certainly the language used by them,

which is set forth at length in the opinion of the Supreme Court of Arkansas, page ix in the appendix, though it was strong and vigorous, would hardly seem to justify such a sweeping injunction, as was issued in this case, depriving them of their right to picket, to present their side of the labor dispute, and to peaceably assemble. For examples of how the National Labor Relations Board has treated similar language, see *International Longshoremen's Union, CIO and Sunset Line and Twine Co.* 79 NLRB Reports 1487; and *Perry Norvell Company*, (1948) 80 NLRB Reports 225. In these cases, language more strong and violent than in this case was held to be protected by the free speech section of the Taft-Hartley Act. (29 USCA 158.(c))

The Supreme Court of Arkansas considered that the speech of the strikers was calculated to cause breaches of the peace. If their jeers and banter at those crossing the picket line might have had such an effect, the police were present to adequately handle any situation which might arise. The courts at Wynne, a county seat municipality, were open, and ready to handle any complaint made by the Company, its employees, or citizens of the community. No such complaints were made, and the police took no action on their own initiative, a good indication that the jeers, taunts, and banter were taken rather lightly.

The words used herein certainly did not meet

the "clear and present danger" test enunciated in the following decisions of this Court:

Schenck v. U. S., 249 U. S. 47, 63 L. Ed. 470, 39 St. Ct. 249;

Bridges v. California, 314 U. S. 252, 86 L. Ed. 192, 62 S. Ct. 190;

DeJonge v. Oregon, 299 U. S. 353, 81 L. Ed. 278, 57 S. Ct. 255;

Herndon v. Lowry, 301 U. S. 242, 81 L. Ed. 1066, 57 S. Ct. 42.

And in *Terminiello v. City of Chicago*, 337 U. S. 1, 93 L. Ed. 113, 69 S. Ct. 894, this Court held that where a construction was placed upon an ordinance which permitted conviction, should the jury find that the defendant's speech stirred people to danger, incited public dispute, or brought about a condition of unrest, such construction violated the defendants' rights under the Fourteenth Amendment. A similar view was taken by this Court in *Cantwell v. Connecticut*, 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900.

It should be pointed out at this point that in the *Cantwell* case the conduct complained of occurred on a public street. In the case at bar the speech complained of on the part of defendants was uttered in the main while they were on their own property. Certainly, a man's freedom to speak is more circumscribed when that man is

on a public street or in a public place than when the same man is physically present on his own property.

The Supreme Court of Arkansas, however, in the instant case, relied on *Chaplinsky v. New Hampshire*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031. The *Chaplinsky* case involved a state statute which had been very narrowly construed by the New Hampshire Supreme Court. As so construed, it was held to be a valid exercise of the police power of the state. In the case at bar, the petitioners' freedom of speech has been limited by judicial determination and not by legislative exercise of the police power. As this Court said in *Bridges v. California*, *supra*:

"The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation."

C. The injunction violated the petitioners' freedom of assembly.

An important element involved in this case, not usually present in labor disputes, is the right of defendants to assemble on private property. The injunction has enjoined the defendants "from loitering and congregating around and under the tent and upon the property that is used as the union headquarters, located directly across Rowena Street in front of plaintiff's premises." In other words, the defendants are enjoined from

having any meetings or assemblages on their own property.

Freedom of assembly is an integral part of our basic American liberties set forth in the Bill of Rights.

"It was not by accident or coincidence that the right to freedom in speech and press were coupled in a single guaranty with rights of the people peacefully to assemble and to petition for redress of grievances."

Thomas v. Collins, 323 U. S. 516, 89 L. Ed. 530, 65 S. Ct. 315.

"The right thus to discuss and inform people concerning the advantages and disadvantages of unions and joining them is protected, not only as part of freedom of speech, but as part of free assembly."

Thomas v. Collins, supra.

Defendants' property on Rowena Road was used as a strike headquarters. The strikers could meet there, eat meals and relieve each other as pickets. Because of its location, the strikers were able to use it as a place from which to call to the workers as they entered the plant. As demonstrated above, these oral utterances were not subject to injunction or restraint. It necessarily follows that the companion right to free speech, freedom of assembly, is also beyond restraint.

In *Thomas v. Collins, supra* and *Hague v. CIO*, 307 U. S. 496, 83 L. Ed. 1423, 59 S. Ct. 954, the Supreme Court held that the states may not prohibit meetings in support of union organizational campaigns. Significantly, these cases involved public meetings on *public property*. The instant case involves *assembly of persons on private property*. The right of assembly which protects the use of public parks and halls certainly gives even more protection to the use of private property for private purposes.

D. The matters over which the Chancery Court of Cross County, Arkansas, asserted jurisdiction were under the sole and exclusive jurisdiction of the National Labor Relations Board.

The injunction issued by the Arkansas court, flatly prohibiting all picketing, violates the prescribed balance of federal-state jurisdiction over labor disputes set forth by this Court in *Garner v. Teamsters Union*, 346 U. S. 485 (1953) and *United Auto Workers v. Wisconsin Board*, 351 U. S. —, 100 L. Ed. 66, 76 S. Ct. 794. These cases hold that state courts may not enjoin peaceful picketing of employers subject to the National Labor Relations Board. The record reflect clearly that respondent is subject to the jurisdiction of the National Labor Relations Board. The Amalgamated had charges of violations of Section 8 (a) (1) and (3) of the National Labor Relations Act before that body. Moreover, respondent has factories in Arkansas

and Wisconsin, and manufacturers between 2500 and 3500 pairs of pants weekly, all of which are shipped to Wisconsin. State jurisdiction is limited to specific conduct constituting mass picketing and violence.

Both *United Auto Workers v. Wisconsin Board*, *supra*, and *Allen-Bradley Local v. Wisconsin Board*, 315 U. S. 740 (1942), 86 L. Ed. 1154, 62 S. Ct. 820, which it reaffirmed, involved incidents of aggravated violence and mass picketing. Yet the state court injunctions which this Court upheld barred only the violence and mass picketing, and specifically permitted peaceful picketing. In the instant case, the picketing itself is free of violence and mass picketing; the Arkansas Supreme Court merely finding the picketing "coercive and abusive" and "designed to cause a breach of the peace" primarily because of the use of the word "scab" by the strikers. But the injunction bans all picketing as well as any congregating on the union's premises across from the plant.

Even assuming *arguendo* that a state court has jurisdiction to enjoin specific picketing activities on a mere finding that the activities are "coercive and abusive" the decision in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468 (1955) 99 L. Ed. 386, 75 S. Ct. 480, clearly demonstrates that the state court has no jurisdiction to also enjoin wholly peaceful picketing:

"The state decree granting the permanent injunction found that "Defendants' (IAM's) picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's (respondent's) premises by a common carrier without danger of physical injury to the pickets, and movement of the cars was stopped for that reason." The Missouri Supreme Court stated that "the transportation into and out of the plant was stopped 'because it endangered their (presumably the pickets) lives and limbs'" We do not read this as an unambiguous determination that the IAM's conduct amounted to the kind of mass picketing and overt threats of violence which, under the *Allen-Bradley Local* case gave the state court jurisdiction. It does not preclude the conclusion that the transportation was stopped for fear of crossing an otherwise peaceful picket line. *In any event, the state injunction enjoined all picketing.*" (emphasis added)

The Supreme Court of New Jersey noted the same determinative distinction between a limited and all-encompassing injunction in *Busch & Sons, Inc. v. Retail Union of New Jersey*, 15 N. J. 226, 104 A. 3d 448 (1954). See also *National Elective Service Corp. v. United Mine Workers*, (1955) Ky. —, 279 S. W. 2d 808.

Thus the state may continue to exercise its traditional jurisdiction over the public order and use of highways but must leave to the specialized agency designated by Congress, The National Labor Relations Board, the task of ruling upon the legality of peaceful picketing. A

If allowed to stand, the decision below would deny the NLRB's exclusive right to determine the legality of the picketing. In the instant case, the Amalgamated has contended it is picketing to protest respondent's unfair labor practices; respondent asserts in its complaint that the picketing is for the "unlawful purpose of intimidating and coercing plaintiff's employees into joining the Amalgamated Clothing Workers of America, CIO." Whether in fact the picketing is a protected activity under Section 7 of the National Labor Relations Act or a violation of Section 8 (b) (1) (a) of that Act, is clearly a matter for the exclusive decision of the NLRB. *Garner v. Teamsters Union, supra*. But respondent has sought the relief of the state courts instead of the agency designated by Congress. The state court, in turn made the very determination which was exclusively delegated to the NLRB, and by issuing a blanket injunction against all picketing, rendered any future decision of the NLRB moot.

The instant decision thus offers a convenient device to local judges seeking to avoid the dictates of the *Garner* and *Weber* decisions. It would per-

mit the state to substitute its judgment for that of the NLRB by a finding that picketing is "designed to cause a breach of the peace." It would reintroduce to the field of labor relations the "multiplicity of tribunals and a diversity of procedures" with their "incompatible or conflicting adjudications" which this Court sought to end forever in the *Garner* case.

CONCLUSION

For the reasons stated above, we respectfully petition this Court to grant certiorari to the Supreme Court of Arkansas in the instant case. We believe that the petitioners have been deprived of great and important Constitutional rights—the right to speak freely, to assemble, and to picket peacefully. Petitioners also believe that the Chancery Court of Cross County, Arkansas, was without jurisdiction to issue the injunction herein since the regulation of the subject matter is exclusively reserved to the National Labor Relations Board.

Respectfully submitted,

SIDNEY S. McMATH

LELAND F. LEATHERMAN

HENRY WOODS

c/o McMATH, LEATHERMAN & WOODS
417 National Old Line Bldg.
Little Rock, Arkansas

AND

WILLIAM J. ISAACSON

of New York City

Attorneys for Appellants

July 18, 1956

APPENDIX

In the Chancery Court of Cross County, Arkansas

RAINFAIR, INC.

Plaintiff

v.

No. 3262-A

JAMES E. YOUNGDAHL, ET AL

Defendants

TEMPORARY INJUNCTION

On this day, same being the 24th day of June, 1955, this cause came on for hearing upon the verified complaint of the plaintiff and oral testimony of Peter A. Bonady asking that a temporary restraining order be issued temporarily restraining defendants and each of them, their agents and employees, and all other persons acting in concert with them from interfering with plaintiffs business, its customers and employees and from picketing or patrolling, or causing to be picketed or patrolled, the plaintiff's premises and the sidewalks and streets adjacent to plaintiff's premises, with placards or banners designating said place of business as unfair to organized labor and the Court after being fully advised, finds:—

That unless the defendants herein are restrained from the unlawful practices set forth in the above complaint and in the testimony of

said Peter A. Bonady, that they will continue to do same and thereby cause plaintiff to suffer great and irreparable damages for which it has no adequate remedy at law.

IT IS THEREFORE, Considered, Adjudged and Decreed, by this Court, that the defendants, James E. Youngdahl, W. Chandler, Ruth Grant, Norma Cobb, Hazel Kennedy, Pauline Midgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline Waldrop, and each of them and their agents and employees and each and every one of the officers and members of the Amalgamated Clothing Workers of America, CIO, and all other persons acting in concert with them, be and they are hereby temporarily enjoined while on, adjacent or near plaintiff's premises located on Martin Drive and Rowena Street in Wynne, Arkansas, from interfering with plaintiff's business, its customers and employees and from picketing or patrolling, or causing to be picketed or patrolled, the plaintiff's premises and the sidewalks, streets or other property adjacent to plaintiff's premises with placards or banners designating said place of business as unfair to organized labor or with placards otherwise so worded as to give said place of business such designation; that the defendants and each of them, their agents and employees and the officers and members of the above mentioned union, and all other persons acting in concert with them, be and they are each

hereby restrained and enjoined from accosting and detaining, or causing to be accosted or detained, on the sidewalks or streets adjacent to or on plaintiff's premises any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing or working for plaintiff or from calling their attention to any alleged unfairness of plaintiff or its place of business to organized labor; from threatening, intimidating or coercing any of the officers, agents, or employees of plaintiff at any place; from loitering and congregating around and under the tent and upon the property that is used as headquarters, located directly across Rowena Street in front of plaintiff's premises; and from obstructing, or attempting to obstruct, the free use of the streets adjacent to plaintiff's place of business and the free ingress and egress to plaintiff's property until the further order of this court.

This is a temporary injunction and the defendants and each of them may show cause upon reasonable notice to plaintiff's attorney why this temporary restraining order should be modified or dissolved.

This order will become effective when plaintiff has filed with the Clerk of this Court an injunction bond in the sum of \$500.00 conditioned as provided by law.

That the Clerk of this Court is directed to issue summons upon each of the above named defendants, warning them to answer herein as provided by law and to endorse this order upon said summons by attaching a certified copy of same thereto. The Sheriff of Cross County, Arkansas, is hereby directed to serve such summons and restraining order upon each of the said defendants.

/s/ Ford Smith, Chancellor.

State of Arkansas

County of Cross.

I, J. W. McElroy, Jr., Clerk of the Chancery Court within and for the County and State aforesaid, do hereby certify the foregoing two pages of typewritten matter to be a true, correct and complete copy of the *Temporary Injunction* in Chancery No. 3262-A, *Rainfair, Inc., v. James E. Youngdahl, et al*, as the same appears for record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal this June 25, 1955.

/s/ J. W. McElroy, Jr.

Chancery Clerk
Cross County, Arkansas
(SEAL)

In the Chancery Court of Cross County, Arkansas

RAINFAIR, INC.

Plaintiff

v.

No. 3262-A

JAMES E. YOUNGDAHL, ET AL

Defendants

DECREE

On this day, same being the 15th day of September, 1955, the cause having been heretofore submitted to the court by agreement of counsel upon the complaint of the plaintiff, the motion of the defendants to dissolve the temporary restraining order, the amendment to the plaintiff's complaint, the answer of the defendants, the citation for contempt ordered by the court, the testimony of James E. Youngdahl, Jerome Bell Becker and Woodrow Chandler taken by the defendants before the court on July 1, 1955, and the testimony of Charlie Ford, Jewel Newby, Dollie Jones, Nadine Johnson, Ruby Reynolds, Carlos Jones, Lorene Jones, Ella Jane Clark, Mrs. Annie Brown, Jearline Baker, Dorothy Davis, Jack Cobb, Bo Hamrick, Elmer Brown, and Pete Bonady taken on behalf of the plaintiff on the above date, and the testimony of Thomas Cobb, Jerry Hamrick, Mildred Tacker, Lee Hamrick and Jack Cobb, taken before the court on July 27, 1955, with reference to the citation for contempt for violating the terms of the temporary injunction.

tion, and all stipulations of counsel and orders of the court rendered in this cause, from which the court finds as follows:—

1. That the parties have agreed that the cause is submitted on July 27, 1955, for final decree, upon all of the pleadings, the testimony, stipulations and orders made in this cause, and the plaintiff appeared by its attorneys, Shaver & Shaver, and the defendants appeared by their attorneys, McMath, Leatherman & Woods.

2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, and that said defendants should be permanently enjoined from picketing the plaintiff's plant.

3. That the citation for contempt for violation of the temporary injunction issued in this cause should be dismissed, and the defendants should be directed to pay all the court costs in this case.

It is, therefore, considered and decreed by this court that the defendants James E. Youngdahl, W. Chandler, Ruth Grant, Norma Cobb, Hazel Kennedy, Pauline Madgett, Lois Morrison, Mildred Tacker, Florence Roberts and Pauline

Waldrip, and each of them, and their agents and employees, and each and every one of the officers and members of the Amalgamated Clothing Workers of America, CIO, and all other persons in sympathy, or acting in concert with them, be, and they are hereby permanently enjoined while on, adjacent to, or near plaintiff's premises located on Martin Drive and Rowena Street, in Wynne, Arkansas, from interfering with plaintiff's business, its customers and employees, and from picketing or patrolling, or causing to be picketed or patrolled the plaintiff's premises, and the sidewalks, streets, or other property adjacent to plaintiff's premises, with placards or banners designating said place of business as unfair to organized labor, or with placards otherwise so worded as to give said place of business such designation; that the defendants, and each of them, their agents and employees, and the officers and members of the above-mentioned union, and all sympathizers, and all other persons acting in concert with them, be, and they are hereby restrained and enjoined from accosting and detaining, or causing to be accosted or to be detained on the sidewalks or streets adjacent to or on plaintiff's premises, any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing, or working for plaintiff, or from calling attention to any alleged unfairness of plaintiff,

or its place of business, to organized labor; from threatening, intimidating or coercing any of the officers, agents or employees of plaintiff at any place; from loitering and congregating around and under the tent and upon the property that is used as the union's headquarters, located directly across Rowena Street in front of plaintiff's premises; and from obstructing, or attempting to obstruct the free use of the streets adjacent to plaintiff's place of business, and the free ingress and egress to and from plaintiff's property.

It is further ordered that the citation for contempt issued against the defendants be, and the same is hereby dismissed, and that the defendants shall pay all costs incurred in this case.

Ford Smith, Chancellor

Supreme Court of Arkansas

JAMES E. YOUNGDAHL, ET AL

Appellants

v.

No. 884

RAINFAIR, INC.

Appellee

Opinion Delivered March 19, 1956
Appeal from Cross Chancery Court — Affirmed

MINOR W. MILLWEE, Associate Justice

Appellee, Rainfair, Inc., is engaged in the manufacture of men's slacks in its plant at Wynne, Arkansas, where it employed approximately one hundred women and seven men in April, 1955. None of the employees were members of a labor union at that time but some of them had signed membership application cards with appellant, Amalgamated Clothing Workers of America, C. I. O., hereinafter called "Union." On Monday, May 2, 1955, twenty-nine employees failed to return to work and a picket line was established by the Union. Appellee's plant manager notified said employees by registered mail that it would be assumed that they were quitting their jobs if they did not return to work in three or four days. Three employees returned to work but twenty-six remained on strike and the picketing was continued until May 19, 1955, when the

pickets were withdrawn and the strikers applied for reinstatement. In the meantime appellee had hired thirteen new employees and immediate reinstatement of the strikers was declined.

On June 17, 1955, the strikers met with several staff members of the Union at Forrest City, Arkansas, and voted to re-establish the picket line. In the meantime the Union filed alleged unfair labor practice charges against appellee before the National Labor Relations Board which were still pending at the time of the hearing in the instant case. The picket line was re-established about 6:00 a. m. on Monday, June 20, 1955, and on June 24 appellee filed the instant suit against the Union and certain staff members and strikers, as a class, to enjoin them from picketing and the commission of certain acts of intimidation, violence, threats, abuse, insults and breaches of the peace allegedly committed by appellants along the picket line and upon Union premises directly across the street from appellee's plant.

On June 30 appellants filed a motion to vacate a temporary injunction issued on the date suit was filed. At the hearing held on said motion on July 1, it was agreed that the testimony there adduced would be considered on appellee's application for a permanent injunction. A citation for contempt against certain persons for violation of the temporary injunction was dismissed after a hearing on July 27. The chancellor took the case

under advisement and this appeal is from a decree entered September 15, 1955, making the temporary injunction permanent.

Appellants contend the decree violates their rights of free speech and assembly under the U. S. and Arkansas Constitutions; that there was no showing that the picketing resulted in violence, breaches of the peace or other unlawful acts; that the language used by the strikers along the picket line is common in all labor disputes; and that the regulation of the subject matter of the suit is exclusively reserved to the National Labor Relations Board. In the light of these and other contentions we proceed to an examination of the evidence which is for the most part undisputed.

While the pleadings and testimony were directed primarily to incidents which occurred during the second picketing, there was evidence that some of them were merely a resumption of the pattern set in the first picketing. The plant manager was followed by the strikers every time he left the plant in his car. One of the pickets told him she was going to wipe the sidewalks clean with him and send him back to Wisconsin. He had so many anonymous telephone calls at his home after 9:00 p. m. that he had to have the phone disconnected. Nails and roofing tacks were strewn over the parking area of appellee's plant and the driveways at the homes of the plant manager and twelve of the women employees.

When the picketing was resumed on June 20, 1955, the Union rented a vacant lot directly across Rowena Street from the main entrance to appellee's plant. The street runs north and south and is about twenty feet wide. Appellants placed a tent on the lot in which they installed a telephone, tables, benches and chairs and the lot was used as headquarters for the strikers. One of appellee's employees, Mrs. Jewell Newby, lived in a trailer next to the Union lot and within a few feet of their tent. About 12:30 a. m. on June 20, she observed two women strikers driving up and down Rowena Street who had previously threatened to move her trailer and whip her. The strikers then parked their truck near the trailer and punctured two tires on an automobile belonging to Mrs. Newby's daughter who was visiting her at the time. The two strikers were arrested and convicted on criminal charges preferred by Mrs. Newby. About five o'clock on the same morning a window of appellee's plant was found to have been broken and a black snake about five feet long was found coiled inside the plant under the broken window.

The picketing was resumed about 6:00 a. m. on June 20 with usually one or two carrying signs up and down Rowena Street in front of the plant. Other Union staff members, strikers and their sympathizers would assemble under and around the tent in groups estimated at different times

from eight to thirty-seven. As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the west edge of their lot and sometimes in Rowena Street and engage in loud and offensive name calling, singing or shouting directed at the workers. They would call the workers "scabs," "dirty scabs," "fat scabs," "yellow scabs," "crazy scabs," "cotton patch scabs," "pony tailed scabs," "fuzzy headed scabs," "fools," "cotton picking fools," and other similar names. This took place every time an employee left or entered the plant. It was done by the strikers individually, in couples or by the entire group and in a loud and boisterous manner. One witness described it as "just bedlam" when more than a dozen joined in the shouting. Particular names or remarks were reserved for individual workers. One pregnant worker was greeted with, "Get the hot water ready," or, "I am coming to make another payment on the baby, call Dr. Beaton," or, "Why, you can work another hour until you go to the delivery room." This worker and another drove to a filling station for gasoline when two of the strikers drove up and told the attendant not to wait on "these scabs" before he waited on the strikers.

One worker said the strikers always called her "fat scab," and that individual pickets and strikers made fun of her clothing and asked her if "Pete,"

the plant manager, still liked her "low-cut dresses and earrings." This made the employee so angry she invited the picket to come over and "make it some of her business." This worker thought she had a right to work without being molested and insulted because she had two boys to support. On one occasion two strikers drove by a house where two workers were visiting and one of the strikers shouted, "You gals better check your sheets to-night. There might be a snake in them."

The strikers sang songs with improvised lyrics to the tune of certain popular ballads and religious and Union songs. "When the Saints Go Marching In" became "When the Scabs Go Marching In" and the ballad, "Davy Crockett," began, "Born in a cotton patch in Arkansas, the greenest gals we ever saw . . ."

The women pickets would stand in the street or sit near the plant and shout ugly names, stick out their tongues, hold their noses and make a variety of indecent gestures while pointing at the workers in the plant. Several workers testified the continuous name calling and boisterous conduct of the strikers made them afraid, angry, ill or nervous and had an adverse effect on their ability to properly do their work. Some of the workers would talk back to the strikers while others remained silent. The Chief of Police of Wynne testified there was more tension during the second picketing than the first and that he

was fearful there was going to be trouble during the second picketing and so informed Union staff members. One staff member called him once when trouble seemed imminent and wanted to "go on record" as having requested the presence of the officer.

The Assistant Regional Director of the Union testified that the purpose of the second picketing was to exert "moral pressure" on the workers and because of certain unfair labor practices of appellee. While the Union had an action pending before the National Labor Relations Board on account of such alleged practices, he expressed an unwillingness to await the Board's action before proceeding with the trial of the instant suit. The principal complaint was asserted to be appellee's refusal to recognize Union's offer of proof of majority status, but it was admitted that Union was unwilling to go into an election and had withdrawn its request therefor at the time of the hearing. The assistant director and other staff members considered it insulting to be called a "scab" but they felt that others might look upon it as a "badge of honor."

In support of their numerous contentions that the decree appealed from is in violation of their constitutional rights, and that the picketing involved here was legal and peaceable, appellants rely upon such cases as *Thornhill v. Alabama*, 310 U. S. 88, 60 S. Ct. 736, 84 L. Ed. 1093; *Carlson*

v. *California*, 310 U. S. 106, 60 S. Ct. 746, 84 L. Ed. 1104; *Cafeteria Employees v. Angelos*, 320 U. S. 293, 64 S. Ct. 126, 88 L. Ed. 58; *Bakery & Pastry Drivers v. Whol*, 315 U. S. 769, 62 S. Ct. 816, 86 L. Ed. 1178; *Local No. 802 v. Asimos*, 216 Ark. 694, 227 S. W. 2d. 154; and *Boyd v. Dodge*, 217 Ark. 919, 234 S. W. 2d. 204. In urging the opposite view, appellee cites and relies upon *Milk Wagon Drivers Union v. Meadowmoor Dairies*, 312, U. S. 287, 61 S. Ct. 552, 85 L. Ed. 836, 13 A. L. R. 1200; *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154; *Hughes v. Superior Court of California*, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985; *Local Union No. 13 v. Stathakis*, 135 Ark. 86, 205 S. W. 450; *Riggs v. Tucker Duck & Rubber Company*, 196 Ark. 571, 119 S. W. 2d. 507; and *Smith v. F & C Engineering Company*, Law Rep. Vol. 100, No. 3, 285 S. W. 2d. 100. It would serve no useful purpose to differentiate the factual situation presented to the instant case from any of the cases cited above. The whole issue here would seem to boil down to whether the appellants were engaged in peaceful picketing. If so, the court wrongfully issued the injunction. If not, the decree should be affirmed. All the cases seem to agree that workers have the constitutional right to engage in peaceful picketing, unattended with violent conduct, but that picketing carried on with intimidation, threats, violence, coercion or

other unlawful means is illegal and may be enjoined.

A constitutional right to abuse, insult, slander or intimidate others is simply nonexistent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others. As the court said in *Chaplinsky v. State of New Hampshire*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031: "Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which has never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting, or "fighting" words — those which by their very utterance inflict injury or tend to incite an immediate breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal

act would raise no question under that instrument.' *Cantwell v. Connecticut*, 310 U. S. 296, 309, 310, 60 S. Ct. 900, 906, 84 L. Ed. 1213, 128 A. L. R. 1352." It has long been a violation of the criminal laws of this state for any person to " . . . make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptance is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault . . . " Ark. State. Sec. 41-1412.

The words of Judge Eder in *Lilly Dache, Inc. v. Rose*, 28 N. Y. S. 2d. 303 are particularly applicable here: "There is nothing mysterious in the term 'peaceable picketing.' To picket is to post a watcher to observe; as applied to a labor dispute it means the stationing of one or more persons to observe and to attempt to persuade; peaceable picketing means simply, tranquil conduct, conduct devoid of noise or tumult, the absence of a quarrelsome demeanor, a course of conduct that does not violate or disturb the public peace; this is but a common-sense definition. As a necessary corollary, boisterous conduct, the use of vile language, bellicose demeanor, threats, violence, coercion, intimidation, shouting, and interference with the use of the premises or impeding the public highway, as by mass picketing, which is

the use of a large number of pickets, is not peaceable picketing, but is illegal picketing."

"It is true that an injunction prohibiting all picketing may not be based upon isolated and episodic acts of violence or other unlawful conduct. Even if it be conceded that the acts of violence involved here fall in that category, there was nothing isolated nor infrequent about the persistent abuse, insults and epithets along the picket line. Many jurisdictions have authorized such injunctions where the strikers' acts and conduct have been so entangled with violence and other illegal conduct that future excesses might reasonably be anticipated in the light of what was previously done. See cases collected in 132 A. L. R. 1218. According to the undisputed evidence here, the whole pattern of conduct along the picket line discloses a clear design on the part of the appellants to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results. It is difficult to understand how any court could classify such conduct as "peaceful picketing."

While the question of jurisdiction was not raised below and appellants expressed an unwillingness to await the action of the National Labor Relations Board on their charges of unfair labor practices against appellee before proceeding with the trial of the instant case, it is now earnestly

contended that chancery court lacked jurisdiction which is exclusively reserved to the N. L. R. B. under federal statutes. Appellant rely on *Garner v. Teamsters Local 776*, 346 U. S. 485, 74 S. Ct. 161, 98 L. Ed. 228, and *Weber v. Anheuser Busch*, 348 U. S. 468, 75 S. Ct. 480, 99 L. Ed. 386. The facts in these cases bear little similarity to those involved here, and we find nothing to indicate an intention to supplant or overrule the doctrine of *Allen-Bradley Local v. Wisconsin Employment Relations Board*, *supra*, where it was held that the state may still exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways. In the *Garner* case the court was careful to point out that the activity there enjoined did not threaten a probable breach of the state's peace. In *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 69 S. Ct. 516, 93 L. Ed. 631, the court said: "While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal — even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states." See also, *Amalgamated Clothing Workers of America, et al. v. The Rickman Brothers*, 348 U. S. 511, 75 S. Ct. 452, 99 L. Ed.

600; *National Labor Relations Board v. Longview Furniture Company*, 206 Fed. 2d. 274.

We realize that the U. S. Supreme Court is the final arbiter as to the extent the different federal acts have affected the traditional state jurisdiction to enjoin picketing by unlawful means or for illegal purposes. So far the state courts have been unanimous in holding that the National Labor Relations Act does not preclude them from granting injunctive relief against picketing in a manner that is unlawful under state law. See cases collected in 36 A. L. R. 2d. 1037. Until otherwise told, we shall assume that it was not the purpose of the federal act to deprive a state court of its ancient jurisdiction in such matters.

The decree is affirmed.

In the Supreme Court of Arkansas

JAMES E. YOUNGDAHL, ET AL.

Appellants

v.

No. 884

RAINFAIR, INC.

Appellee

PETITION FOR RE-HEARING

Comes now the appellants by their attorneys, McMath, Leatherman and Woods and William J. Isaacson and petition the Honorable Supreme Court for a re-hearing in the above captioned matter, and as grounds for their petition state:

(a) The incidents occurring in the course of the first picketing should not have been considered by the Court in arriving at its decision. The first picketing involved different issues, different personnel, and was in a large measure unrelated to the second picketing. The first picketing continued for 17 days, from May 2nd to May 19th, with no attempt being made by Rainfair, Inc., to secure an injunction against appellants. Apparently Rainfair did not regard this picketing to be subject to restraint. The complaint makes no allegation regarding incidents occurring during the first picketing and is confined wholly and solely to the second picket line. The opinion states that the principal complaint of the strikers was the appellee's refusal to recognize the union's

proof of majority status. This was the reason for the first picketing; the second picketing was to protest the unfair labor practices of the company in refusing to reinstate the strikers and to secure recognition.

(b) The decision of the Court bases the affirmance of the Chancellor's decree upon the strikers' conduct at the picket line . . . the purported insults and epithets from the strikers. Such a basis for the decision makes it distinctly contra to *Cafeteria Employees v. Angeles*, 320 U. S. 293; 64 S. Ct. 126; 88 L. Ed. 58, where the pickets were admittedly "insulting" customers, yet the injunction was struck down as being in violation of the 14th Amendment. The decision equates words spoken on the picket line with "violence." A court may not enjoin picketing, because of the inhibitions of the 14th Amendment, unless such picketing is set in a background of violence, and unless the violence is of the very texture of the picketing. The Court in its decision has allowed a picket line to be enjoined because of the billingsgate, common to all strike situations. Such a far reaching decision is a serious curtailment of the right of labor to organize.

(c) The decision places its principal reliance on *Chaplinsky v. N. H.*, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031. It gives to that decision a broad interpretation unwarranted by the facts and the language of the Supreme Court of the United

States, *Chaplinsky v. N. H.* involved a violation of the following statute:

"No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name, nor make any noise or exclamation in his presence and hearing with intent to deride, offend or annoy him, or to prevent him from pursuing his lawful business or occupation."

After discussion the construction given this statute by the Supreme Court of N. H., the Supreme Court of the United States says:

"The statute, as construed, does no more than prohibit the face-to-face words plainly likely to cause a breach of the peace by the addressee, words whose speaking constitute a breach of the peace by the speaker—including 'classical fighting words', words in current use less 'classical', but equally likely to cause violence, and other disorderly words, including profanity, obscenity and threats."

In the instant case, we fail to see where any so-called "fighting words" were used. The word at which the appellee took umbrage was the word "scab", which is a recognized English word used everywhere to describe a person who crosses a

picket line. The words involved in *Chaplinsky v. N. H.* were as follows:

"You are a God-damned racketeer and a damned Fascist, and the whole government of Rochester are Fascists or agents of Fascists."

These words were not only profane, but actually libelous. In the case at bar, we do not believe that any of the words used were either profane or libelous.

(d) Although the Court disposed of the appellants' contention that their freedom of speech, under the 14th Amendment, had been interdicted, the Court gave no consideration to the appellants' contention that their freedom of assembly had been unlawfully abridged. Freedom of assembly is just as important as the right of freedom of speech. The injunction issued by the learned Chancellor prevents the appellants from holding peaceful meetings on their own property. The impairment of such a constitutional right, in our judgment, is worthy of great consideration by this Court.

(e) Although the Court cited the Supreme Court decision in *Weber v. Anheuser-Busch*, it did not consider an important aspect of that opinion, although that aspect was clearly drawn to the Court's attention both in the brief and oral argument. Specifically, the *Weber* opinion, in

its closing paragraph, holds that even though a state court may exercise jurisdiction with reference to violence, its jurisdiction is restricted only to the violence, and it may not exercise jurisdiction over the peaceful picketing, and consequently may not enjoin the peaceful picketing. In short, peaceful picketing is not drawn within the jurisdiction of the state court because there may also be an allegation and proof of violence.

Respectfully submitted,

McMATH, LEATHERMAN & WOODS
AND WILLIAM J. ISAACSON

Attorneys for Appellants

CERTIFICATE

Comes now Henry Woods, one of the attorneys for the petitioners herein, and certifies his belief that there is merit in the above and foregoing petition, and that it is not filed for the purpose of delay. He further certifies that a copy of the petition has been served on Shaver and Shaver, attorneys for the appellee, by mailing a copy of said petition to them on the 3rd day of April, 1956.

s *Henry Woods*

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE 6, SECTION 2:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

AMENDMENT 14, SECTION 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

SECTION 7 OF TAFT-HARTLEY ACT (29 USCA 157)

"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

SECTION 8 OF TAFT-HARTLEY ACT (29 USCA 158)

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (§ 157 of this title);

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 (c) 156 of this title, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act (§§141 to 197 of this title), or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act (this subsection) as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) (§159(a) of this title), in the appropriate collective-bargaining unit covered by such agreement when made and has at the time the agreement was made or within the preceding twelve months received from the Board a notice of compliance with section 9(f)(g)(h) (159 (f), (g), (h) of this title), and (ii) unless following an election held as provided in section 9(c) (§159(c) of this title) within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Pro-

vided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act (§§141 to 197 of this title);

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) (§159(a) of this title).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 (§157 of this title): Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his repre-

representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer; provided it is the representative of his employees subject to the provisions of section 9 (a) (§159(a) of this title);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is:

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing

or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 (§159 of this title); (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work; Provided, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act (§§141 to 197 of this title);

(5) to require of employees covered by an agreement authorized under subsection (a)(3)

the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected; and

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed.

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act (§§ 141 to 197 of this title), if such expression contains no threat of reprisal or force or promise of benefit.

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any ques-

tion arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the

dispute occurred, provided no agreement has been reached by that time; and

" (4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) (§159(a) of this title), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act, as amended (§§158, 159, 160 of this title), but such loss of status for such employee shall terminate if and

when he is reemployed by such employer. (July 5, 1935, c. 372, §8, 49 Stat. 452; June 23, 1947, c. 120, Title I, §101 in part, 61 Stat. 140.)

SECTION 10 OF TAFT-HARTLEY ACT

• 29 USCA SECTION 166 (a)

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

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JOHN T. FEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1957

No. 11

JAMES E. YOUNGDAHL, W. CHANDLER, RUTH RALPH,
AMALGAMATED CLOTHING WORKERS OF AMERICA,
CIO, et al., Petitioners,

vs.

RAINFAIR, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

BRIEF FOR PETITIONERS

WILLIAM J. ISAACSON,
15 Union Square,
New York 3, N. Y.

SIDNEY S. McMATH,
LELAND F. LEATHERMAN,
HENRY WOODS,

c/o McMATH, Leatherman &
Woods,

417 National Old Line Bldg.,
Little Rock, Arkansas.

Counsel for Petitioners.

HERBERT SEMMEL,
Of Counsel.

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Supreme Court of the United States

OCTOBER TERM, 1957

No. 11

JAMES E. YOUNGDAHL, W. CHANDLER, RUTH RALPH,
AMALGAMATED CLOTHING WORKERS OF AMERICA,
CIO, et al., Petitioners,

v. S.

RAINFAIR, INC.

BRIEF FOR PETITIONERS

Opinions Below

The decision of the Supreme Court of Arkansas (R. 196) has not yet been officially reported but appears in the unofficial reports at 288 S. W. 2d 589. The Chancery Court of Cross County Arkansas issued no opinion and its decree of permanent injunction is unreported (R. 13).

Jurisdiction

The decision of the Supreme Court of Arkansas was rendered on March 19, 1956 (R. 196). An order denying a timely petition for rehearing was entered by the Supreme Court of Arkansas on April 23, 1956 (R. 207). The Petition for Writ of Certiorari was

filed on July 20, 1956, and the writ was granted on October 8, 1956 (R. 207).

The jurisdiction of this Court is based upon 28 U. S. C. § 1257(3).

Questions Presented

1. Whether a state court may, consistently with the free speech guarantee of the Fourteenth Amendment, prohibit strikers from attempting to dissuade strikebreakers from working by addressing strikebreakers as "scabs" or variants of that term?

2. Whether a state court may, consistently with the Fourteenth Amendment, prohibit strikers from all peaceful persuasion, including picketing, assembly and other concerted activities near a struck plant, because the strikers referred to strikebreakers as "scabs" or variants of that term, where such striker activities are not set against a background of violence, and are conducted for a lawful purpose?

3. Whether a state court may, consistently with the Fourteenth Amendment, prohibit strikers from any peaceful assembly under any circumstances on their own property, because strikers had assembled on such property and attempted to dissuade strikebreakers from working by addressing them as "scabs" or variants of that term?

4. Whether a state court may prohibit strikers from engaging in speech, picketing, assembly and other concerted activity subject to regulation and control under the National Labor Relations Act, where

the strikers' speech, picketing, assembly and concerted activities are free of violence, overt threats of violence or mass picketing?

5. Whether a state court may, assuming it has authority to prohibit strikers from attempting to address strikebreakers as "scabs" or variants of that term, also prohibit all peaceful concerted activity near the plant, including speech, picketing and assembly, even though such activities constitute concerted activity protected under the National Labor Relations Act?

Constitutional and Statutory Provisions Involved

The Constitutional provisions involved herein are Section One of the Fourteenth Amendment to the Constitution of the United States and Section Two of Article Six of the Constitution of the United States. See Appendix, p. 89. The relevant provisions of the National Labor Relations Act, as amended (29 U. S. C. § 151 *et seq.*), are set forth in the Appendix, pp. 89-93.

Statement

A. Proceedings Before the National Labor Relations Board and Arkansas State Courts.

Petitioner, Amalgamated Clothing Workers of America, AFL-CIO (hereinafter referred to as the "Amalgamated"), is a labor union representing workers in the men's clothing industry (R. 1). The individual petitioners were either employees of Rainfair, Inc. who had applied for membership in Amalgamated or employees of Amalgamated (R. 11, 28, 38-39, 44-45, 189).

Respondent, Rainfair, Inc. (hereinafter referred to as "Rainfair"), is a Wisconsin corporation engaged in the manufacture of men's clothing in plants located in Wynne, Arkansas, and Racine, Wisconsin (R. 1, 117). At Wynne, Rainfair, employing approximately 80 women and 7 men, including the manager, manufactures between 2500 and 3500 men's slacks weekly, all of which are shipped to Wisconsin (R. 119, 120, 154). Immediately prior to the controversy here in issue, Rainfair employed 107 employees at Wynne (R. 120).

Early in 1955 the Amalgamated commenced an organizational campaign among Rainfair's employees at Wynne. By April 1955, the campaign had achieved such success that Amalgamated, offering to prove its majority status to Rainfair, demanded recognition (R. 122-23). Rainfair did not accord the recognition requested nor did Rainfair accept Amalgamated's offer of majority proof. Instead Rainfair countered with an anti-union campaign consisting of activities which caused Amalgamated to file an unfair labor practice charge with the National Labor Relations Board,¹ alleging as violations of the National Labor Relations Act Rainfair's interference, restraint and coercion of its employees in the exercise of their right of self-organization, and its refusal to recognize and bargain with Amalgamated as the majority representative of the employees.² In addition, despite Rainfair's conduct, on April 5, 1955, Amalgamated filed a petition for a representation election with the National

¹ N. L. R. B. Case No. 32-CA-483. For the disposition of the charges by National Labor Relations Board Settlement Agreement and Posting of Notice see pp. 8-9, *infra*.

² 29 U. S. C. §§ 158(a)(1) and (5), Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended.

Labor Relations Board which the Board proceeded to process.³

But when Rainfair persisted in what the Amalgamated adherents considered to be unfair labor practices, Amalgamated was constrained to withdraw its election petition⁴ and, instead, on May 2nd, '29 employees went out on strike (R. 45-46, 119). Rainfair's plant manager at Wynne, Peter A. Bonady, countered with a registered notice to the strikers stating that it would be assumed that they were quitting their jobs if they did not return to work (R. 121). As a result of this tactic, 3 of the strikers returned (R. 119), but 26 remained on strike and continued to picket until May 19th when the pickets were withdrawn and the strikers unconditionally applied for reinstatement (R. 66-67, 127).⁵ Rainfair, which had only employed 13 new employees in the interval, refused to reinstate the striking employees, despite the fact that the admitted lack of experienced personnel had hampered production and there was less than a full complement of workers (R. 120-21).

Amalgamated thereupon filed an amended charge of unfair labor practices with the Labor Board, alleging discrimination in employment because of Rainfair's refusal to reinstate the strikers. On June 17th, be-

³ N. L. R. B. Case No. 32-RC-872. Under the Labor Board rules, a labor organization petitioning for an election must present evidence of having been "designated by at least 30 percent of the employees" (29 Code of Federal Regulations § 101.17(a)). In the absence of such a showing the petition is dismissed.

⁴ The withdrawal was granted "without prejudice" by the Regional Director of the National Labor Relations Board.

⁵ Neither Rainfair's Complaint nor Amended Complaint makes any reference to this first strike or attendant picketing, and there is little evidence in the record concerning it.

cause of Rainfair's continued unfair labor practices, the strikers voted to reestablish the picket line (R. 45, 46, 57) and, beginning on June 20th, the plant was again picketed (R. 1-4, 7-8, 39-40, 45-46, 50).

On June 24th, Rainfair instituted an action in the Chancery Court of Wynne County against petitioners here (R. 1-4). The complaint was expressly limited to the strike and accompanying activities during the period "since June 20, 1955" (R. 1, 2, 3). It alleged, among other things, "The aforesaid unlawful acts, conduct and practices complained of is for the unlawful purpose of intimidating and coercing [Rainfair's] employees into joining the Amalgamated Clothing Workers of America, CIO" (R. 3).⁶ Solely upon the verified complaint of the plaintiff and oral testimony of Peter A. Bonady, plant manager, a temporary injunction was issued that same day restraining all picketing, all assembly upon or use of the strikers' headquarters, and all communications by petitioners and their sympathizers with Rainfair's employees, suppliers or customers "on, adjacent or near plaintiff's premises" (R. 5).

A motion to vacate this temporary injunction was filed by petitioners on June 30th (R. 7), and on July 1st a hearing was held and the matter taken under

⁶ In a subsequent amendment to the complaint Rainfair alleged that the picketing was illegal because, among other things, it was "also contrary to the public policy of the state of Arkansas in that the pickets sought by violence, threats, intimidation and coercion to compel the plaintiff to coerce its employees' choice of a bargaining representative, and thereby compel plaintiff to abide by the union's policy instead of the state's policy" (R. 8-10). The public policy, as asserted by Rainfair in its amended complaint, was the so-called "Right to Work" amendment of the Arkansas Constitution, Amendment #34, and the enactments "for the enforcement of the provisions of Amendment #34" (R. 8-9).

advisement by the Chancellor. It was stipulated at that hearing that the testimony adduced would be considered on the application for a permanent injunction (R. 17-18).⁷

On the 15th of September, 1955 the injunction was, without opinion, made permanent (R. 13-15). The injunction enjoined petitioners "and each of them, and their agents and employees and each and every one of the officers and members of Amalgamated Clothing Workers of America, CIO, and all other persons in sympathy, or acting in concert with them, while on, adjacent to, or near plaintiff's premises . . . from interfering with plaintiff's business, its customers and employees, and from picketing or patrolling . . . with placards or banners designating said place of business as unfair to organized labor, or with placards otherwise so worded as to give said place of business such designation . . . from accosting and detaining, or causing to be accosted or detained on the sidewalks or streets adjacent to or on plaintiff's premises, any person or persons seeking to enter or depart from said place of business for the purpose of dissuading them from patronizing, or working for plaintiff, or from calling attention to any alleged unfairness of plaintiff, or its place of business, to organized labor; from threatening, intimidating or

⁷ On July 20th the Chancellor issued a contempt citation against Mildred Tacker, one of the petitioners herein, Thomas Cobb, her fifteen year old brother, Lee Hambrick, a striker during the first picketing who had since disassociated himself from the strike, and Jerry Hambrick, his fifteen year old son. A hearing was held upon the citation and it developed that the teen-age boys had broken a number of milk bottles on the company's premises on June 28th. No testimony was adduced connecting the teen-age pranks with the strike or strikers, and on the 15th of September the contempt citation was dismissed (R. 10-11).

coercing any of the officers, agents or employees of plaintiff at any place; from loitering and congregating around and under the tent upon the property that is used as the union's headquarters located directly across Rowena Street in front of plaintiff's premises; and from obstructing, or attempting to obstruct the free use of the streets adjacent to plaintiff's place of business, and the free ingress to and from plaintiff's property." In short, the injunction constituted a total ban on all communication, picketing and concerted activity "on, adjacent to, or near plaintiff's premises."

On March 19, 1956 the Supreme Court of Arkansas affirmed (R. 195).

While the appeal before the Supreme Court of Arkansas was pending and several months after the injunction first issued, the Amalgamated, recognizing the time lag attendant upon state court appellate review, refiled its petition for an election before the Labor Board (Case No. 32-RC-872). On October 19, 1955, an election was held which the Amalgamated lost by only 9 votes, 57 to 48, despite the existing injunctive restraints upon organizational and electioneering activities near the plant and the further fact that 15 of the strikers who had voted challenged ballots were later declared ineligible.⁸

In March 1956, the Regional Director of the Labor Board entered into a settlement agreement with Rainfair, providing that Rainfair would not engage in questioning employees with reference to their mem-

⁸ N. L. R. B. Decision & Certification of Results of Election, May 25, 1956 (Case No. 32-RC-872).

bership in the Amalgamated, threatening economic reprisal because employees supported the Amalgamated, and other acts of interference, restraint and coercion of its employees in violation of Section (8)(a)(1). The discrimination charges were dismissed. The (8)(a)(5) refusal to bargain charge had been withdrawn prior to the representation election in accordance with Board administrative practice under which the Labor Board will not conduct an election in the face of an outstanding refusal to bargain charge.

B. Evidence as to the Strike and the Accompanying Picketing and Concerted Activities.

During the strike and picketing which began on June 20, 1955, the Amalgamated picketed with one to three pickets on each of the two streets bordering the company premises. They carried signs reading (R. 1, 19-20, 49):

“Rainfair Workers on Strike, Rainfair is
Unfair to Its Employees.

Amalgamated Clothing Workers of America,
CIO.”

There was no violence, threat of violence or property damage on the picket line, nor was there mass picketing at any time (R. 23).⁹ In fact, there is no evidence that the pickets engaged in any conversations with those employees who continued to work during

⁹ On the night before the strike and picketing of June 20 two minor incidents took place. Tires on a car belonging to the daughter of a non-striker were punctured and two of the strikers convicted and fined in Justice Court at Wynne for this offense (R. 93-94): Later that same night an unidentified person broke a plant window and threw a snake into the plant (R. 196-197).

the strike. The picketing activity was unchallenged in the state court proceedings and there were no findings that it was other than orderly and peaceful.

In addition to the picketing, the Amalgamated leased a vacant lot across the road from the plant (R. 20, 26, 86). At this point the road was some 20 feet wide (R. 29, 198) with a ditch approximately 10 feet wide on one side (R. 29). A tent was erected 30 to 40 feet back from the lot-line. The tent, which contained chairs, tables and benches and a telephone, was used as a general strike headquarters; it was also used for meetings and serving meals to strikers (R. 20, 26-27, 32, 59, 65, 66). During the periods the picketing was in progress, it was the custom of several of the strikers and Amalgamated's representatives to gather at the tent. According to the Amalgamated's witnesses, the number ranged from 3 up to a maximum of 15 (R. 42-43, 49-50, 58-59); according to Plant Manager Bonady, there were groups ranging from 8 to 30 (R. 111). The court below placed the maximum number at 37 (R. 198).

The striker, while standing on this lot, orally tried to dissuade the non-striking employees from entering the plant (R. 36, 52). Illustrative of their arguments is the testimony of Charles Ford, a witness called on behalf of Rainfair. According to Ford, an insurance salesman, the strikers, mistaking him for an applicant for employment as a strikebreaker, sought to dissuade him from applying by telling him that Rainfair "worked people there pretty hard on the sewing machines. They would only be paid seventy-five cents an hour . . .". Ford further volunteered on direct examination that "Nobody tried to stop me

or molest me in any way" (R. 74-75). The strikers would also sing union songs (R. 21, 24-25, 29-31, 40), and parodies of folk and popular songs traditionally employed on picket lines and strikes.¹⁰ As the court below noted (R. 199), the song "When the Saints Go Marching In" became "When the Scabs Go Marching In". The song continued, "When the scabs go marching in, oh, how I would hate to be in that number, when the scabs go marching in" (R. 149). The ballad, "Davy Crockett" began, "Born in a cotton patch in Arkansas the greenest gals we ever saw . . ." It continued, "Working for Rainfair for seventy five cents" (R. 149). Among the other songs which the strikers sang was one containing the words (R. 29-30):

"Oh, you can't scare me, I am sticking to the Union, I am sticking to the Union to the day I die."

Other Rainfair witnesses testified that the strikers talked loudly, jeered and shouted at them as they went into and out of the plant (R. 131-150). According to these Rainfair witnesses, when employees who had not joined the strike went to and from work, the strikers called them "scabs", and, as the court below found (R. 198), such variations as "fat scabs", "yellow scabs", "pony-tailed scabs", "crazy scabs", "cotton patch scabs" and "fuzzy headed scabs". One employee, a witness for Rainfair, also testified that the strikers made fun of her pregnancy (R. 136).

¹⁰ The traditional use of such songs by workers is discussed in Greenway, *American Folk Songs of Protest* 10-14 (U. of Pa. Press 1953). As Greenway notes "Making a union song in the rural South is a simple process of taking a gospel hymn, changing 'I' to 'We' and 'God' to 'CIO'" p. 11. See also Barbash, *The Practice of Unionism* 226-230 (1956).

Another testified that they made fun of her "low cut dresses" (R. 147). On a few occasions, as the court below noted (R. 193), the strikebreakers were referred to as "fools" or "cotton picking fools".

Essentially, however, as is plain from the testimony of all of Rainfair's own witnesses, the strikers addressed the strikebreakers as "scabs" and "just all kinds of scabs" (R. 111, 132, 139, 145, 149; see also R. 36, 43, 52-53). This too is the crux of the opinion of the court below (R. 198, 200). It is the principal basis of its conclusion that "the whole pattern of conduct along the picket lines discloses a clear design on the part of the appellants to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results" (R. 202).

Throughout the strike, all who desired entered and left the plant at will (R. 41, 64-65, 67). Not a single employee was deterred, let alone prevented, from going to work. All continued to work without interference or incident (R. 53). In not a single instance was there testimony that any of the strikers threatened any of the employees as they entered or left the plant. Not a single supplier or truck driver discontinued business with or delivery to Rainfair.

Aside from its heavy reliance on the use of the word "scab", either used alone or with qualifying adjectives, the court, in order apparently, to buttress its conclusion of "insult" and "intimidation and coercion", referred to other incidents. The triviality of these incidents is apparent from the opinion itself; that they were wholly free of menace and were so regarded by the strikebreakers is plain from the

record. Thus, the court below referred to "one occasion" where "two strikers drove by a house where two workers were visiting and one of the strikers shouted, 'You gals better check your sheets tonight. There might be a snake in them.' " One of the women to whom this remark was made, a witness on behalf of Rainfair, testified that she was "not at all" frightened by this and that she regarded the entire matter "as a joke" (R. 135). The other incident referred to one of the strikers joshing a strikebreaker concerning her "low cut dresses and earrings". The court below regarded this as making "the employee so angry she invited the picket to come over and 'Make it some of her business.' This worker thought she had a right to work without being molested and insulted because she had two boys to support" (R. 199). The entire incident, however, as related on direct examination by the employee in question, took place as follows (R. 146-147):

"Q. Would you please tell the Court what they called you? A. Well, one afternoon I left. As I started to leave the plant when I got off and I was walking by the warehouse and my friend always parks her car on the Martin Side Drive and I was going around and Lois Morrison hollered, 'Oh, look there at that low-cut dress and big earring girl,' and 'Does Pete still like low-cut dresses and earrings?' And I said, 'I don't know. You will have to ask him,' and she said, 'If he does, I think I will get me one,' and I said, 'It won't do you any good. You don't have anything to fill it out.' "

* * * *

"A. . . . on Tuesday morning when I would come to work and I got out of the car and Florence

was walking, carrying the picket on Martin Avenue, she asked me where my big earrings were because I didn't have any on and I asked her if it was any of her business and she said it sure was and I told her to come over and make it some of it because my ears was over here on Rainfair property."

The reactions of the strikebreakers to the strikers were obviously not those of persons who were "intimidated" or even "insulted". If anything, these incidents reflect an exchange which the employees involved regarded as somewhat humorous.

That the picketing was conducted in an atmosphere free of violence is attested by the following excerpt of the testimony of Rainfair's Plant Manager, Peter Bonady (R. 126):

"Q. Now, Mr. Bonady, when the picket line was thrown up the second time, do you know of any actual incidents of violence that have occurred out there in connection with the picket line? A. You are talking about physical violence. Is that what you call violence?"

Q. Yes, physical violence. A. I have never observed anybody."

To the same effect, is the following excerpt from the testimony of Jack Cobb, Chief of Police in Wynne (R. 153):

"Q. Now, Chief, you don't know of any actual violence having occurred down there do you? Do you know any? A. No, sir, we have had none."

Summary of Argument

I

A. In 1940, this Court, in *Thornhill v. Alabama*, 310 U. S. 88, expressly declared that the constitutional guarantees of free speech contained in the Fourteenth Amendment applied to the communication of workingmen in their efforts to organize and to promote union activities where that communication was carried on through the medium of picketing. In the cases which have followed, this constitutional concept has been given more precise meaning and the area in which the states may act in regulating the competing interests of management and labor illumined. "Cases reached the Court in which a State had designed a remedy to meet a specific situation or to accomplish a particular social policy." *Teamsters Local v. Vogt, Inc.*, 77 S. Ct. 1166 at p. 1169. These were cases "not involving a curtailment of free speech in its obvious and accepted sense." *Id.* at p. 1171.

But every decision of this Court has recognized that there is a phase of the constitutional right of free utterance in picketing which, under the Fourteenth Amendment, is entitled to protection against state encroachment. E. g., *Hughes v. Superior Court*, 339 U. S. 460, 464-65, 468 (1950).

The sweeping injunction here constitutes a generalized restraint of picketing and all other concerted activity without reference to conduct or purposes. It involves "a curtailment of free speech in its obvious and accepted sense." *Vogt, supra*, at p. 1171.

In more precise terms, this Court has recognized the constitutionality of state prohibition of picketing and accompanying activity in two kinds of cases: *First*, the objective of the picketing or of the accompanying speech is illegal; and *second*, the manner in which the picketing is conducted is so enmeshed with violence that the picketing or utterances loses its character as speech.

The permanent injunction here which bars all peaceful persuasion by the strikers and their adherents, including speech, picketing, assembly and other concerted activity, on the ground that the court below disapproves of the language used by the strikers, particularly the reference to the strikebreakers as "scabs", either as used alone or with qualifying adjectives, does not fit into either category. *First*, there is not nor may there be a holding here that the objective of the picketing was illegal. *Second*, the speech and other concerted activity of the strikers cannot be equated with violence; it certainly cannot be equated with violence which generated such a coercive forward thrust that all of the peaceful activities of the strikers including speech, picketing and assembly, were enmeshed in it and placed outside the constitutional protections of the Fourteenth Amendment. The phase of the strikers' activities which the court below condemned, the strikers' reference to the strikebreakers as "scabs", is neither coercive nor intimidatory nor is it calculated to cause breaches of the peace. But whatever its constitutional status, it does not warrant a ban on all peaceful concerted activities of the strikers near the plant.

B. The use of the word "scab", the traditional expression denoting strikebreakers, and variants of that term, were not coercive or intimidatory. The truth of the appellation scab is not here in issue. From the time of American labor's first collective stirrings, the term "scab" has been used to refer to persons who work in the place of strikers or continue to work while their fellow workers strike. And so here, the strikers at Rainfair, embarked on a desperate gamble in which the stakes were not only their jobs at Rainfair, but any industrial jobs in Wynne, Arkansas, sought by the use of such term to persuade one-time adherents to their cause to rejoin them, and to persuade other employees who had never been part of their cause to join. They sought by the use of the term "scab" to sting the strikebreakers into a realization of their wrongdoing. Further, with all of the economic and social pressure of their employer and the community actively joined together against them, the strikers found it necessary to use the traditional songs and words of labor to solidify their newly formed and loosely joined association.

The term scab was a one-word symbol for the strikers' views and judgment of the strikebreakers. To permit a state court to deny individuals the right to speak the word which symbolizes a known set of facts, values and opinions, would permit a state court to cut out from the discourse of union men not only a key word in their argument, but argument itself. Yet, "the word [scab] carries with it no import of infamy or crime. . . . [It] embraces no thought of violence, no infraction of the law, no threat, no menace." *Wood Mowing & Reaping Machine Co. v.*

Toolley, 114 Misc. 185, 191, 186 N. Y. S. 95, 99 (Sup. Ct. 1921). The conduct of the strikers here and their use of the appellation "scab" carried with it nothing more than the compulsion or the coercion associated in the communication of ideas.

The picket line here was solely a means of communication. It had no other aspect. It had no economic sanction; it did not even have the sanction which sometimes derives from a union as an institution. In such circumstances, the picket line and accompanying speech was pure speech and nothing more.

The fear of being branded a "scab" cannot be equated with a threat of bodily harm. *American Brake Shoe Co. v. Annunzio*, 405 Ill. 44, 90 N. E. 2d 83 (1950). The National Labor Relations Board has also held that calling non-strikers various names does not constitute "restraint and coercion" under Section 8(b)(1)(A) of the National Labor Relations Act. Such "vocally vented resentment" constitutes privileged communication within the terms of Section 8(c) of the Act. So, too, an employer may in his efforts to defeat unionization, condemn the union and its adherents in disparaging terms.

In essence, what the Arkansas courts have here termed "coercive and intimidatory", is no more than the constitutionally protected expression of the social and moral values which every picket line represents.

C. The speech used by the strikers does not constitute "fighting words" which incite to, or give rise to a clear and present danger of breaches of the peace.

The "fighting words" doctrine, first articulated in *Cantwell v. Connecticut*, 310 U. S. 296 (1940), was first applied in *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942). The court below mistakenly rests on those decisions; both decisions make it plain that the words used by the strikers here are not fighting words.

The peaceful character of the picket line and the fact that the words were, in fact, not such as engendered breaches of the peace cannot be ignored in determining whether speech is so inflammatory as to be barred. Neither of the Arkansas courts below made a finding that a breach of the peace was imminent or threatening. Both appear to find merely that the activity in question "tended" to cause a breach of the peace. But "tendency" to cause a breach of the peace is not enough. The standard for constitutional judgment of governmental restriction on speech is the clear and present danger test first enunciated in the dissenting opinion in *Whitney v. California*, 274 U. S. 357 (1927). This is the standard of review in cases involving application of the "fighting words" doctrine. *Cantwell v. Connecticut*, *supra*.

The all-embracing prior restraint here does not find its counterpart in the conviction under the narrowly drawn criminal statute involved in the *Chaplinsky* case. The words involved there were not in any proper sense communication of information or opinion; the use of the words constituted an immediate threat to the peace.

Here, unlike *Chaplinsky*, the words were an "essential part" of the "exposition of ideas". The term

"scab" unlike "Fascist" or "racketeer" in the *Chaplinsky* context, is not a common epithet or slur of imprecise meaning to be applied in any controversy. Scab is a definitive term applied in labor controversies where, as here, men work while others strike.

In the realm of labor disputes, as in political and religious controversies, sharp differences may arise. "Instigated by emotion and impelled by deep conviction, men always employ strong words," *Wood Mowing & Reaping Machine Co. v. Toohey*, 114 Misc. 185, 190, 186 N. Y. S. 95, 98 (Sup. Ct. 1921), particularly where, as here, they are incited by the employer's active and destructive opposition.

Individual expression does not lose its constitutional protection merely because it encompasses an emotional appeal. Moreover, workingmen, particularly where education is most limited, talk in their own language; the strong, everyday language of the laboring man.

If the decision of the court below were to stand, each word used by the pickets would have to be placed on the judicial scales and weighed. The courts would be placed in the ludicrous position of measuring one word against another—of for example, evaluating the import of the word "strikebreaker", "deserter", "traitor", "betrayor", "renegade", "judas", and a whole galaxy of synonyms and associated words. Such a decision would compel individual employees and lower echelon union officials, in the stress of economic battle, to make this same search for the innocuous phrase—or, in the alternative, as is more likely, to forego any speech on the picket line, lest such speech

bring judicial condemnation or prohibition of all concerted activity.

Finally, under the circumstances of this case, the denial of the right to speak is plainly not a denial of that right in order to safeguard some vital interest of the state or to prevent a serious and immediate threat to the peace. At most, it seeks to insulate the strike-breakers from the annoyance of being called a "scab", to insulate them from the moral and social pressures implicit in the term, and, in fact, in picketing itself. But these moral and social pressures are the essence of the constitutional freedom of expression. They are essential to the rights granted workingmen to associate themselves in unions of their own choosing for their economic and social betterment, one of the great concerns of our democratic society.

II

A. But irrespective of the constitutional status of the strikers' speech, an injunction prohibiting all persuasion, including speech, picketing, assembly and all other concerted activity, was without warrant and a denial of the strikers' rights guaranteed them under the Fourteenth Amendment.

The evils of the Alabama statute involved in *Thornhill v. Alabama*, an indiscriminate ban on all picketing, are multiplied by the instant injunction. The sweeping decree here subjects all activity, legitimate no less than illegitimate, to the peril of prosecution and swift punishment for contempt.

B. Where, as here, an injunction rests on a finding that the strikers employed illegal or improper means, the rules governing regulation of such conduct are to be found in this court's decision in *Drivers Union v. Meadowmoor Dairies Inc.*, 312 U. S. 287 (1941). The court below, in its affirmance of the injunction sought to justify its all-inclusive sweep under that decision by conjuring up a finding that there is "an enmeshment in verbal abuse" and therefore all speech, picketing, assembly and every other form of communication and concerted activity near the plant must cease.

Meadowmoor does not permit of such restraint. Under *Meadowmoor* all picketing—in this case all strike and union activities near the plant—may be prohibited only when (1) the picketing is enmeshed in a background of contemporaneous violence comprising the very texture and process of the picketing; and (2) the violence is of such severity and frequency as to generate "a momentum of fear" which would "survive" even though future picketing were wholly peaceful. In the instant case, irrespective of how this court may regard the language used by the strikers in terms of the free speech protections of the Fourteenth Amendment, it had no emanations or consequences which would survive its discontinuance.

To strike down the all embracing injunction in the instant case does not mean, assuming the illegality of the strikers' speech, that such speech must go unrestrained. *First*, it may be the subject of a limited injunction. *Second*, any conduct of the strikers *not constitutionally privileged* may be subjected to punishment under several Arkansas statutes (ARK. STAT. Sec. 41-1412; Sec. 81-207).

The instant case did not constitute regulation of the conduct of individuals or the time, manner and place of their activities; it constituted, instead, prior prohibition of all activities. While freedom from previous restraint cannot be regarded as exhausting the constitutional liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision. *Lowell v. Griffin*, 303 U. S. 444, 451 (1938).

III

"The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. Oregon*, 299 U. S. 353, 364. The injunction restraining the strikers from congregating on their premises at union headquarters was part of the total design of the injunction to prevent any strikers or union adherents or their sympathizers from engaging in any form of communication, even communication with each other, near the struck plant, and contravenes the strikers' right to freedom of assembly as guaranteed under the Fourteenth Amendment.

But assuming that a proper finding that a phase of the strikers' concerted activities on their premises is subject to prohibition, such a finding does not constitute justification for barring every assembly in the future, irrespective of its lawful and peaceful character.

This Court has upheld the right of unions to conduct meetings on public property. *Hague v. C. I. O.*, 307 U. S. 496 (1939); *Thomas v. Collins*, 323 U. S. 516 (1945). *A fortiori*, union meetings on their own

private property near the plant during a decisive phase of the employees' concerted activity, must be permitted.

IV

With the passage of the Taft-Hartley Act in 1947, Congress formulated a comprehensive code of conduct which, in addition to protecting the rights of employees to organize and engage in concerted activity, outlawed certain aspects of labor union activity by introducing a series of unfair labor practices against unions. In so doing Congress exclusively reserved to the National Relations Board in the first instance, and thereafter to the federal courts, a wide range of employee and union activity and, accordingly, decreed such range of activity closed to the states.

This Court in a series of decisions since the passage of Taft-Hartley has proceeded to draw a line of demarcation between the broad area in which only the Labor Board may operate and the area in which the States are still free to operate. In the course of this litigation it has become progressively clear that the area over which Congress exercised its legislative power was wide, the area within which the states might continue to operate, narrowly drawn. The powers which the states had exercised in the field of industrial relations have had to give way to the paramount need that interstate industrial enterprises be subject to uniform rules uniformly applied.

The following rules definitively enunciated by this Court are controlling with reference to the state courts' residual powers: *First*, "a State may not

prohibit the exercise of rights which the federal Acts protect." (*Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468 at 474). *Second*, a State may not, in furtherance of its public policy, irrespective of the basis on which such declaration of policy rests, enjoin conduct which has been made an unfair labor practice under federal statute (*Weber, supra* at 840-841), *except* where there is "mass picketing, violence and overt threats of violence." (*United Auto Workers v. Wisconsin Board*, 351 U. S. 266, 274 (1956).) In terms of the foregoing precepts the court below's arrogation of authority to itself is without warrant and the injunction cannot stand.

A. For strikers to address strikebreakers as scabs lies at the core of striker discourse. It constitutes a "concerted activity" within the protective grant contained in Section 7 of the Labor Act, and falls outside the area over which the state has authority to act, legislatively or judicially. But even if it were concluded that the speech in issue might not be protected activity, such speech partakes sufficiently of the character of protected activity so as to make it a matter for prior Labor Board determination.

On the other hand, if the conduct is unprotected it may be proscribed as an unfair labor practice. Section 8(b)(1) gives the National Labor Relations Board broad regulatory powers with reference to strike activities.

But whatever the result of the Board's deliberations, whether the Board ultimately finds that speech such as the strikers here used was protected or prohibited activity, is in the first instance for the Board to decide. But even if the speech here were neither

protected nor prohibited activity it would still be outside state court authority. *Retail Clerks Int'l. Ass'n. v. Newberry Co.*, 352 U. S. 987 (1957). If Congress left certain phases of picketing and strike activity free of statutory ban or protection, Congress intended that such phases of picketing and strike activity should not only be free of federal regulation and control but state regulation and control as well.

Uniform administration of a national policy under circumstances such as are here present, particularly where the Labor Board has already taken hold of a substantial phase of the controversy, requires that the complex statutory interpretations called for in pre-emption cases be made by the Labor Board.

B. Since striker speech here involved lies within jurisdiction of the National Labor Relations Board and since there is no violence, overt threats of violence or mass picketing, state court is without authority to enjoin. Demonstrative of the limited zone in which the states may continue to exercise concurrent power is this Court's opinion in *Weber v. Anheuser-Busch*; 348 U. S. 468, 482.

C. But assuming that Arkansas had jurisdiction to enjoin a particular aspect of the strikers' conduct, the speech here in issue, the state court only has authority as to such speech. A state may not extend its jurisdiction to regulate and restrain "protected activities" under the National Labor Relations Act. In *Weber v. Anheuser-Busch*, this Court underscored the distinction between a total prohibition of all activity and a restraint properly confined to overt threats of violence or mass picketing. The result is in accord

with a desired balance of federal-state jurisdiction in labor disputes. The state exercises its traditional jurisdiction over public order and use of highways vis à vis mass picketing and violence, but leaves to the specialized agency designated by Congress, the National Labor Relations Board, the task of ruling upon the legality of peaceful concerted activities.

If allowed to stand, the decision of the court below will lead to an easy circumvention of the preemption doctrines so carefully formulated and pieced together by this Court over these past several years. It will permit a state to take jurisdiction of labor relations matters and substitute its judgment for that of the National Labor Relations Board by the simple device of selecting a narrow phase of union activity and labeling it unlawful under state law.

If the state court below's finding with reference to the strikers' speech is proper, injunctive relief must be limited solely to such speech.

ARGUMENT

I

The speech of the strikers, including their use of the word "scab," was a valid exercise of their constitutional right of free speech and therefore beyond injunctive restraint.

A. Basis of Lower Court's Decision.

In order properly to evaluate the decision of the court below upholding an all embracing injunction barring peaceful picketing, assembly and all other peaceful activities and speech by the strikers and Union adherents, it is first essential to set forth the basis of the lower court's decision in terms of the picketing decisions of this Court.

As noted recently in *Teamsters Local v. Vogt, Inc.*, 77 S. Ct. 1166, at 1168, this Court found "an aspect of communication" in "one of the aims of picketing" in *Senn v. Tile Layers Union*, 301 U. S. 468 (1937). Thereafter, in 1940, this Court, in *Thornhill v. Alabama*, 310 U. S. 88, expressly declared that the constitutional guarantees of free speech contained in the Fourteenth Amendment¹¹ applied to the communication of workingmen in their efforts to or-

¹¹ This Court had earlier held that the free speech guarantees of the First Amendment had been carried over into the Fourteenth Amendment, and were to be applied in review of the regulatory activities of the several states. *Gitlow v. New York*, 268 U. S. 652, 666 (1923); *Stromberg v. California*, 283 U. S. 359, 368 (1931); *Near v. Minnesota*, 283 U. S. 697, 707 (1931); *Lowell v. Griffin*, 303 U. S. 444 (1938).

ganize and to promote union activities where that communication was carried on through the medium of picketing. This was quickly followed by a series of decisions striking down state court injunctions restrictive of picketing activities.¹² The existing circle of protections which the federal government cast about the activities of workingmen in their efforts to organize into unions of their own choosing, to secure for themselves a larger share of the nation's industrial product, and to promote higher wages and improved conditions of employment, had been completed.

The principle announced in *Thornhill* and its progeny was, of course, not without limit or qualification. As with all broad statements of novel doctrine, it remained for subsequent decisions of this Court to fix the limits of constitutional protection and the kind and extent of the limitations which the states may draw about the exercise of picketing and related concerted activities. The constitutional concept has been given more precise meaning and the area in which the states may act in regulating the competing interest of management and labor illumined. "Cases reached the Court in which a State had designed a remedy to meet a specific situation or to accomplish a particular social policy." *Vogt* at p. 1171. These were cases "not involving a curtailment of free speech in its obvious and accepted sense." *Ibid.* But every decision of this Court, from *Senn v. Tile Layers Union*, 301 U. S. 468 (1937) to *Vogt* recognizes that there is an aspect of communication in picketing—"a phase of the constitutional right of free utterance" (*Carpenters & Joiners Union v. Ritters Cafe*, 315 U. S. 722, 727 (1942)),

¹² E. g., *A. F. L. v. Swing*, 312 U. S. 321 (1941); *Cafeteria Employees Union v. Angelos*, 320 U. S. 293 (1943);

which the Fourteenth Amendment protects against state encroachment. *Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287 (1941); *Hughes v. Superior Court*, 339 U. S. 460, 464-465, 468 (1950); *Teamsters Union v. Hanke*, 339 U. S. 470, 479 (1950); *Building Service Union v. Gazzam*, 339 U. S. 532, 536-537 (1950); *Teamsters Local v. Vogt, Inc.*, *supra*.

In the light of these concepts, the injunction affirmed by the court below cannot stand. The injunction here in issue is not one in which a state has "designed a remedy to meet a specific situation or to accomplish a particular social policy." In essence, this injunction constitutes a generalized restraint of picketing without reference to conduct or purposes, and involves "a curtailment of free speech in its obvious and accepted scope." (See *Vogt* at p. 1171). The decision below conflicts with all of the picketing decisions of this Court from *Thornhill* to date.

In more precise terms, this Court has recognized the constitutionality of state prohibition of picketing by injunction in two kinds of cases:

First, the objective of the picketing or of the accompanying speech is illegal. Picketing, or any other phase of speech, interwoven in a course of conduct to achieve a purpose which the state in the proper exercise of its powers may regulate, may be declared improper and struck down.¹³

¹³ *Giboney v. Empire Storage & Ice Co.*, 336 U. S. 490 (1949); *Hughes v. Superior Court*, 339 U. S. 460 (1950); *Building Service Employees v. Gazzam*, 339 U. S. 532 (1950).

Second, the manner in which the picketing is conducted is illegal. Picketing, or accompanying utterance, may be so enmeshed with violence that the picketing or utterance loses its character as speech and is subject to complete ban. The picketing or speech becomes assimilated to violence and is so regarded by the listeners or viewers to whom it is addressed.¹⁴

This case fits into neither category of cases. As to the first, the court below does not hold that the object of the picketing was unlawful and that, therefore, the picketing was subject to bar. Indeed, since the business of the employer affects interstate commerce, it cannot. If the court below were to have concluded—as Rainfair alleged in its complaint (R. 3)—that the activities of Amalgamated and the striking employees were for the purpose of coercing Rainfair's employees to join the Amalgamated, and to coerce Rainfair to coerce its employees in the choice of their bargaining representative, it would constitute an unauthorized invasion of the jurisdiction exclusively reserved to the National Labor Relations Board. *Garner v. Teamsters Union*, 346 U. S. 485 (1953). See *Teamsters Local v. Vogt, Inc.*, 77 S. Ct. at 1171.

Nor can the picketing and other concerted activity here in issue fall within the scope of permissive state ban because of the manner in which such activities were conducted. The court below has sought to bar all picketing on the ground that the picketing

¹⁴ *Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287 (1941); but compare *Cafeteria Employees Union v. Angelos*, 320 U. S. 293 (1943).

was other than peaceful. In terms of the opinion below (R. 200), "the whole issue here would seem to boil down to whether the appellants [petitioners herein] were engaged in peaceful picketing" and the court proceeds to conclude that they were not. But the court below, reaching this conclusion, did not rely on incidents which it apparently regarded "as acts of violence".¹⁵ It recognized that "an injunction prohibiting all picketing" could not rest on such "isolated and episodic" incidents. See *Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. at 295.¹⁶ The court below affirmed the all inclusive injunction of the trial court by concluding that the picketing was other than peaceful on the ground that "there was nothing isolated nor infrequent about the persistent abuse, insults and epithets along the picket line."

Essentially, the opinion of the court below comes to this: The Supreme Court of Arkansas affirms a ban upon all peaceful picketing, assembly and other peaceful concerted activities because it did not approve of the language used by the strikers, particularly the reference to strikebreakers as "scabs," used either alone or with qualifying adjectives.

¹⁵ The court below referred to the "tire puncture" and "snake" incidents noted above, p. 9, fn. 9, and the strewing of tacks on driveways during an earlier strike and picketing (R. 129).

¹⁶ It appears from the opinion of the court below itself that the incidents to which the court adverts are not only "isolated and episodic", as the court below apparently concedes, but that these incidents, obviously non-recurrent in nature, are plainly not of the character which would justify an injunction directed against similar conduct, let alone an injunction, as here, barring all peaceful picketing and other concerted activity. The insufficiency of these incidents as a base for an all inclusive ban such as that here involved is discussed at length at pages 59-69, *infra*.

In review of the state court decisions where First Amendment rights are drawn into question, this Court goes behind the state court labels and examines the underlying facts to ascertain independently whether these rights have been violated. *Plumbers Union v. Graham*, 345 U. S. 192, 197 (1953).¹⁷ On such a review it is submitted that the record demonstrates that the language used by the strikers was neither (1) "coercive" or "intimidatory" (see pp. 33-46, *infra*), nor (2) in the factual context of the picket line here, calculated to cause breaches of the peace and other unlawful results (see pp. 46-59, *infra*). The constitutional guarantees contained in the First and Fourteenth Amendments apply and the ban here in issue cannot stand. Moreover, even if it were concluded that a limited phase of the strikers' activities lay outside the protections of the Fourteenth Amendment, the all inclusive ban would still be without foundation. See Point II, *infra*.

B. The Use of the Word "Scab", the Traditional Expression Denoting Strikebreakers, Was Not Coercive or Intimidatory.

The truth of the appellation "scab" is not in issue. There is no suggestion by either the trial court or the Supreme Court of Arkansas that the term "scab" did not accurately describe the employees who worked while others struck (R. 46-47, 68). From the beginning of the 19th Century, almost from the time of American labor's first collective stirrings, the term

¹⁷ Illustrative of the scope of review in such cases is this Court's opinion in *Bakery Drivers v. Wohl*, 315 U. S. 769 (1942), where this Court struck down an injunction against picketing even though the state court had labelled the purpose of the picketing as "aggressive".

"scab" has been used to refer to men who work in the place of strikers or who continue to work while their fellow-workers strike.¹⁸

The term has had a long acceptance in the courts¹⁹ and before administrative tribunals²⁰ as the term precisely and accurately applied to strikebreakers. Illustrative of the recognition given this industrial fact is the holding of the Wisconsin Employment Relations Board in *Matter of Foster-Lothman Mills*, Decision No. 1343, 20 LRRM 1313 (1947) where the Wisconsin Board declared (1314):

"Funk and Wagnall's new Standard Dictionary of the English Language defines 'scab' as 'a workman who does not belong to or will not join or act with a labor union. One who takes the place of a striker; a strikebreaker; rat'. This definition of 'scab' has been recognized almost since the time labor unions came into existence and economic strikes were recognized as lawful activities by employes dissatisfied with their working conditions. It must be conceded that the employes working in the complainant's mills when a strike is on, are strikebreakers. By say-

¹⁸ See e. g. *Century Dictionary & Cyclopaedia* (1911); *A Dictionary of Americanisms* (Mathews, Ed. 1951); Murray, *New English Dictionary* (1914); Casselman, *Labor Dictionary* (1949); Webster's *New International Dictionary* (2nd ed. unabridged).

¹⁹ *American Brake Shoe Co. v. Annunzio*, 405 Ill. 44, 90 N. E. 2d 83 (1950); *Wood Mowing and Reaping Mach. Co. v. Toohy*, 114 Misc. 185, 186 N. Y. S. 95 (Sup. Ct. 1921); *People v. Radt*, 71 N. Y. S. 846 (Gen. Sess. 1900). In *Carlson v. California*, 310 U. S. 106, fn. 3, one of the picket signs used by the strikers read "Don't Be A Scab". See also R. 46-47.

²⁰ *Nashville Corp.*, 94 N. L. R. B. 1567, 1582 (1951); *Des Moines, Springfield & Southern Route*, 78 N. L. R. B. 1215, 1218 (1948); *Foster-Lothman Mills*, Wisconsin Employment Relations Board, Decision No. 1343, 20 LRRM 1313 (1947).

ing so, former employes picketing are merely stating a fact. If they say it contemptuously, they are not only expressing their own feeling toward such employes, but the feeling of union-minded people generally. The employes in a strike bound plant may and in many cases undoubtedly are, honorable and high minded persons. Whether they are or not, does not mean that other persons having a different philosophy may not hold them in contempt. There is nothing that prevents pickets from making truthful statements. When they refer to a strikebreaker as a scab, they are merely referring to him in a term by which recognized dictionaries refer to such persons."

Of the many words engrafted upon the English language by labor, none has had a wider currency. In union story, legend and song this is the term for the man who works while his fellow-workers strike.²¹ In labor texts and essays this is its meaning.

Therefore, that working men and women in Wynne, Arkansas would use the term in their union activities was to have been expected. And so they did. The strikers here, embarked on a desperate gamble in which the stakes were not only their jobs at Rainfair, but any industrial jobs in Wynne, Arkansas, sought to persuade one-time adherents to their

²¹ E. g., Fisher, *The Scab*, *Labor's Daily*, Vol. V, No. 43 (Nov. 15, 1936); Greenway, *American Folk Songs of Protest* 13 (U. of Pa. Press 1953) containing such songs as "The Scabs Crawl In". One of the most famous of labor songs, "Which Side Are You On" (pp. 169-71) contains the refrain "Oh workers can you stand it, Oh tell me how you can, Will you be a lousy scab or will you be a man?" See also songs on pp. 137-38, 157, 162-63.

cause—fellow workers who had signed applications for membership in Amalgamated and fellow workers who had gone out on strike with them once before—to rejoin them, and to persuade other employees who had never been part of their cause to join. The strikers sought by the use of the term scab to sting the non-strikers into a realization of their wrongdoing, to give the non-strikers pause in order that they might reevaluate their course of conduct.

In evaluating the strikers' speech, the circumstances which gave rise to the strike and its continuation must be taken into account. See *N. L. R. B. v. Thayer*, 213 F. 2d 748, 755 (1st Cir. 1954), *cert. den.* 348 U. S. 885 (1955). Here, Rainfair fully exploited its massive economic power in opposition to the strikers and their adherents. As noted (pp. 8-9, *supra*), certain of Rainfair's activities obviously constituted violations of the National Labor Relations Act. The extent of Rainfair's economic power *vis à vis* the striking employees can be measured in part by the fact that in Cross County, Arkansas, where Wynne is located, only 3% of the total working force was employed in manufacturing occupations. Seventy-two percent of the families in Cross County had incomes of less than \$2,000, the median income being \$1,094, as contrasted with a national median income of \$2,619. United States Department of Commerce, Bureau of the Census, *Census of Population: 1950, Volume II, Characteristics of the Population, Part I, United States Summary*, and Part 4, *Arkansas*. Under such circumstances, the employer's opposition was most potent, particularly where it took on the aspects of unfair labor practices.

The extent of the economic pressures at work is personalized in the explanations given by Rainfair witnesses for refusing to join the strike. Thus, Geraldine Baker explained (R. 148):

" . . . I worked before I started out there, six days a week for \$15 a week and I have got two boys to support."

Still another of Rainfair's witnesses, Jewell Newby, explained (R. 95):

"I have had a hard time and if it wasn't for the job at Rainfair I would be on starvation, which I was before I came here."

And still later she testified (R. 101):

"I am proud to be making seventy-five cents an hour."

The community also lined up against the strikers. An organization called The Wynne Industrial Development Corporation comprised of business people in Wynne, actively opposed the Amalgamated's organizational campaign. Under the settlement agreement of the 8 (a) (1) charges, Rainfair agreed not to authorize the Wynne Industrial Development Corporation to act in Rainfair's behalf "in personnel, labor, or any other matters". Rainfair further agreed not to permit the Development Corporation to talk on company time and premises "to [Rainfair's] employees when the purpose is to interfere with, restrain or coerce [Rainfair's] employees in the exercise of their right to self organization . . . to join or assist Amalgamated . . .".

With all of the economic and social pressure of the employers and the community joined together in

opposition against them, it was to be expected that the strikers would seek to solidify their newly formed and loosely joined association by use of the traditional songs and words of labor.²² Moreover, as they judged and censured the wayward employees, who, in the strikers' terms, made common cause with the employer and were "taking away their jobs" (R. 32), they brought themselves into closer association with each other. Their status as loyal members of the group was by contrast highlighted.

In their condemnation of the strikebreaker they also sought to allay the fear of unemployment which they secretly shared with the strikebreaker. It was a self exhortation to continue the collective struggle and to ignore the fears that pursued them and the doubts which gnawed at their newly found collective strength.

The term "scab" was a one word symbol for the strikers' views and judgment.²³ In referring to the non-strikers, the strikebreakers, as scabs, the strikers

²² The genesis of the protest folk song is explained by Greenway in *American Folk Songs of Protest*, *supra*, as follows (p. 10): "These are the struggle songs of the people. They are outbursts of bitterness, of hatred for the oppressor, of determination to endure hardships together, and to fight for a better life. Whether they are ballads composed by an individual or rousing songs improvised on the picket line, they are imbued with the feeling of community, or togetherness. They are songs of unity, and therefore most are songs of the union."

²³ The use of symbols, as scholars in the field of semantics have noted, is a "necessary element in the process of social cooperation, group formation and group action . . ." Wright, *Symbols of Nationalism and Internationalism*, in *Symbols and Values, An Initial Study* (Bryson, Finkelstein, Maelver and McKeon, Eds.) (1954). Kornhauser, in *Human Motivations Underlying Industrial Conflicts* p. 81 (1954), notes: "It is evident that propaganda

were saying, "You are working while we, your fellow workers, are on strike to gain better conditions for all of us. You are disloyal to us, your fellow workers. You have betrayed us, your fellow workers. For this, you must stand publicly condemned." "The 'miracle of language' as it is generally recognized by all who have made a study of it is found precisely at this point. Language is elliptical; there is much more understood than expressed. No account of communication can be given in terms of language considered as merely articulated sounds. It must include also that which is understood or presupposed. Communication or conveyance of meaning is not 'transfer' of ideas from one mind to another (that is merely a figure of speech), the miracle of it is that, through the sounds which alone can be conveyed in this sense, that which is understood in both speaker and hearer, can be mutually recognized or acknowledged. This mysterious fact any theory of communication must make intelligible." Urban, *Language and Reality* (1951).

To permit a state court to deny individuals the right to speak the word which symbolizes a known set of facts, values and opinions, i. e., to use the word "scab" as an abbreviated version of the words quoted above would permit a state court to cut out from the discourse of union men not only a key word in their argument, but argument itself. It would enable each state to set itself up as an omnipotent censor of the speech of working people.

symbols and current social interpretations play a most important part in shaping such aims and expectations for management, employes and the public." See also Baake, *Why Workers Join Unions in Personnel* (Amer. Management Assoc.), Vol. 22, No. 1 pp. 41, 48.

It may be that the word "scab" to some persons is not a very complimentary symbol—to some it may even be offensive or opprobrious. On the other hand, it should be noted, that strikebreakers often look upon the term scab when applied to them as a badge of honor (see p. 55, *infra*). But, whether or not it is an insult is really beside the point; the term is truthful and expresses the opinions and judgments of those using it. "The word [scab] carries with it no import of infamy or crime . . . [It] embraces no thought of violence, no infraction of the law, no threat, no menace." *Wood Mowing & Reaping Machine Co. v. Toohy*, 114 Misc. 185, 191, 186 N. Y. S. 95, 99 (Sup. Ct. 1921).

There is no question but that the word scab as used here was in a sense coercive. But coercion may involve either physical or moral compulsion. Here it was the latter.²⁴ The conduct of the strikers here and their use of the appellation "scab" carried with it nothing more than the compulsion or coercion frequently associated in the communication of ideas.²⁵

²⁴ James E. Youngdahl, assistant regional director in charge of organization in Arkansas, testified as to the purpose of the picketing as follows (R. 18-19, 31):

"No question about it, we attempted in this instance and always attempt through picketing to point out the immorality of crossing through a picket line. That is what we did through that picketing. That is what we always do. That kind of pressure was the kind of pressure which we intended to put on the people who were crossing through the picket line at Rainfair."

²⁵ Kallen, *Coercion*, 3 Encyclopedia of Social Sciences 617. See also the letter sent by the Continental Congress, October 26, 1774, to the Inhabitants of Quebec, referring to the "five great rights" where it was said (*Journal of the Continental Congress*, 1904 ed., Vol. I, pp. 104, 108) (italics added):

"The importance of [freedom of the press] consists, besides the advancement of truth, science, morality and arts in

Communication of ideas through words very often exerts a moral compulsion and therefore may be termed coercion or pressure, but this does not remove its constitutional protection, nor does it "detract from its peaceful nature as long as they. [compulsion and coercion] constitute only economic, moral or social pressure and not the pressure of violence." *Ex parte Bell*, 19 Cal. 2d 488, 497, 122 P. 2d 22, 28 (1942).²⁶ *Cf. Carpenters & Joiners Union v. Ritter's Cafe*, 315 U. S. 722, 727 (1942).

As Judge Magruder, in writing before *Thornhill* in criticism of injunctions against peaceful picketing, stated, "Picketing is already subject to many restrictions, as has been indicated above, on the ground of its intimidating effect; but if physical violence is not threatened, it may be questioned whether non-union workers or strikebreakers are entitled to be protected against the moral coercion involved in the insistent reminder that they are regarded by their fellow-workers on the picket line as traitors to the cause of labor."²⁷

general, in its diffusion of liberal sentiments on the administration of Government, its ready communication of thought between subjects and its consequent promotion of union among them; whereby oppressive officers are *shamed* or *intimidated* into more honorable or just modes of conducting affairs."

²⁶ "That there is such a thing as moral compulsion, coercion, intimidation, threats and fear is a proposition recognized in experience by many court decisions, and in my opinion, these words do not necessarily imply conduct of an unlawful character when applied to a labor dispute. Such words may be used to define the usual, ordinary and customary moral, social and economic pressure which inheres in every labor dispute and particularly where picketing is resorted to." Carter, J., *dissenting on other grounds*, 19 Cal. 2d at 525-26, 122 P. 2d at 42-43.

²⁷ Magruder, *A Half Century of Legal Influence Upon the Development of Collective Bargaining*, 50 Harv. L. Rev. 1071, 1109 (1937).

Likewise, Hellerstein, in his often cited treatise on picketing and judicial restraint in the era preceding the Norris-LaGuardia Act, *Picketing Legislation and the Courts*, 10 N. C. L. Rev. 158 (1932), critically commented upon the fact that calling strikebreakers "scabs" had often been condemned by the courts as "coercive and intimidating," the rationale underlying the opinion of the court below. He declared (p. 178):

"It is exceedingly important to recognize that there is an emotional force which can be exerted, which has no relation to a threat of physical injury or violence, a moral force which labor has every right to exert in industrial struggles, and that it greatly handicaps the worker to deprive him of the use of this weapon."

The picket line here and the accompanying speech of the strikers was solely a means of communication. It was nothing more than "free speech in its obvious and accepted sense." See *Vogt case, supra*, 77 Sup. Ct. at 1171. It had no other aspect. It had no economic sanction; it did not even have the sanction which may sometimes derive from the union as an institution. The strikers were held together solely by their common grievances against the employer, by their newly found loyalty to the group, and by their startling realization that in joining with one another they had created a strength where none existed before. In such circumstances, the picket line and accompanying speech was pure speech and nothing more.

The decision of the Arkansas Supreme Court equating the traditional speech of the picket line with violence is indeed reminiscent of what has been thought

a bygone era, when the courts, following the Massachusetts Supreme Judicial Court decision in *Vegalahn v. Guntner*, 167 Mass. 92, 44 N. E. 1077 (1896), held that peaceful picketing for a lawful objective is necessarily coercive and should therefore be enjoined.

But *Vegalahn v. Guntner* and the attitudes inherent there are no longer reflective of existing legal opinion. The dissent of Justices Holmes in that case is. So long as courts make the false associations reflected in the opinion of the court below, Justice Holmes' dissent bears repeating:

"I pause here to remark that the word 'threats' often is used as if when it appeared that threats had been made, it appeared that unlawful conduct had begun. But it depends on what you threaten. As a general rule, even if subject to some exceptions, what you may do in a certain event you may threaten to do, that is, give warning of your intention to do in that event, and thus allow the other person the chance of avoiding the consequences. So as to 'compulsion', it depends upon how you 'compel'. *Comm. v. Hunt*, 4 Mete. (Mass.) 111, 133, 167 Mass. at 107. So as to 'annoyance' or 'intimidation'."

Holmes' exposition still represents current judicial expression on this subject; the opinion of the Arkansas court below is but an echo of the past, not its regenerated voice. See *Local Union No. 26 v. Kokomo*, 211 Ind. 72, 5 N. E. 2d 624 (1937); *Culinary Workers Union v. Eighth Jud. Dist. Ct.*, 66 Nev. 166, 207 P. 2d 990, reh. den. 66 Nev. 202, 210 P. 2d 454 (1949); *U. E. v. Baldwin*, 67 F. Supp. 235 (D. Conn. 1946); *Ex parte Bell*, 19 Cal. 2d 488, 122 P. 2d 22 (1942).

That the fear of being branded a "scab" cannot be equated with a threat of bodily harm is the square holding of the Supreme Court of Illinois in *American Brake Shoe Co. v. Annunzio*, 405 Ill. 44, 90 N. E. 2d 83 (1950). In that case a union member applied for unemployment compensation and in explanation of his refusal to work by crossing a picket line, testified, "I am not exactly afraid of a picket line, but nobody will want to be branded as a scab and that's what would happen if you go through a picket line." The court, in denying the employee unemployment benefits, held (405 Ill. at 49, 90 N. E. 2d at 85):

"We are aware of the fact that among members of unions the term 'scab' is used to define an employee individual who does not respect a picket line, and that among union members when one is classified as a 'scab' he is frequently ostracized and held in contempt by fellow union members. However, the term 'scab' does not necessarily mean that one will suffer bodily harm.

"In this case it appears that the die sinkers could have entered their place of employment without sustaining bodily harm and since this court will not assume that picketing normally will bring violence, therefore, it appears to be that the die sinkers voluntarily remained away from their employment because they did not care to be classified as scabs by their fellow employees."

Similarly, the National Labor Relations Board has held that calling non-strikers "Dirty Scabs," "Dirty Bastards," "Dirty S.B.'s,"²⁸ "Yellow Scab,"

²⁸ *Int'l. Longshoremen & Warehousemen's Union*, 79 N. L. R. B. 1487, 1493, 1505 (1948).

"Skunks," and "Rats,"²⁹ did not constitute "restraint and coercion" under Section 8(b)(1)(A) of the National Labor Relations Act.³⁰ Such "vocally vented resentment" constitutes privileged communication within the terms of Section 8(c) of the Act.³¹

So too it has been held that an employer may, in his effort to defeat unionization, condemn the union in disparaging terms. In *Jacksonville Paper Co. v. N. L. R. B.*, 137 F.2d 148, *cert. den.* 320 U. S. 772 (1948), where the employer disparaged the union as corrupt and led by racketeers, the Fifth Circuit Court of Appeals held (p. 152), "The Act does not take away the employer's right to freedom of speech. The constitutional right of freedom of speech could not be so abridged as to preclude an employer from expressing his views on labor policy or problems so long as such utterances do not, by reason of other circumstances, have a coercive effect on employees. . . . He has the right to disparage the union. . . ." ³²

²⁹ *Matter of Perry Norvell Co.*, 80 N. L. R. B. 225, 242 (1948).

³⁰ *Cf. Cambria Clay Products Co.*, 106 N. L. R. B. 267, 273 (1953), *enf'd in part, remanded in part*, 215 F. 2d 48 (6th Cir. 1954) (distribution of Jack London's definition of "scab"); see also, *Bettcher Mfg. Co.*, 76 N. L. R. B. 526 (1948) (calling employer "liar" and "manipulator"); *Dallas City Packing Co.*, 116 N. L. R. B. 1609 (1956) (calling employees "fools").

³¹ *Int'l Longshoremen's & Warehousemen's Union*, 79 N. L. R. B. 1487, 1505 (1948). Compare more recent Labor Board developments discussed at pages 76-77, *infra*.

³² The Board has also held that employers do not violate Section 8(a)(1) of the Act by calling union members and pickets names such as "S.O. B." *Stafford Operating Co.*, 96 N. L. R. B. 1217, 1221, 1240-41 (1951), *enforcement, den.* 206 F. 2d 19 (8th Cir. 1953); *Sunnyside Winery*, 77 N. L. R. B. 93, 96, 114 (1948). In *E. A. Laboratories Inc.*, 80 N. L. R. B. 625 (1948), *enf'd as modified*, 188 F. 2d 885 (2d Cir.), *cert. den.* 342 U. S. 673 (1951), the employer continually vilified the union leaders with terms ranging from "racketeers," "thugs," "parasites," "crooks,"

In essence, what the Arkansas courts have here termed "coercive and intimidatory" is no more than the constitutionally protected expression of the social and moral values which every picket line represents. Instead of weighing the elements of an industrial conflict as it actually transpired, the court below was pronouncing judgment upon the implications of its own labels.

C. The Speech Used by the Strikers Does Not Constitute "Fighting Words" Which Incite To, or Give Rise To a Clear and Present Danger of Breaches of the Peace.

The court below, in affirming the all inclusive injunction, concluded that "the whole pattern of conduct during the picket line discloses a clear design on the part of the [strikers] to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful conduct." As has already been shown (pp. 33-46, *supra*), the use of the appellation "scab," in referring to the strike-breakers, was not coercive or intimidating. It is equally plain that the strikers' speech did not include or consist of "fighting words."

The "fighting words" doctrine was first articulated by this Court in *Cantwell v. Connecticut*, 310 U. S. 296 (1940), and was first applied in *Chaplinsky v. New Hampshire*, 315 U. S. 568 (1942). Both of those decisions make it plain that the words used by the

"mental cases" to "communist." 80 N. L. R. B. at 644, 646, 651, 663, 664, 676, 678. The Board held that this conduct did not constitute restraint and coercion of the employees, 80 N. L. R. B. at 628.

strikers here are not fighting words. The court below mistakenly relies on those decisions.

As shown above (pp. 9-14, *supra*), the picket line conduct of the strikers was wholly free of violence to the person, overt threats of violence, or property damage. Nor did breaches of the peace occur on the picket line. Although the non-strikers were called scabs, not a single fight of any kind ensued as a result of this address. The words were words uttered from a considerable distance—anywhere from ten to forty feet. Moreover, the strikers, as well as the non-strikers, were for the most part women. As women, although given freely to articulate their differences, they were less likely than men to engage in activity which would give rise to a breach of the peace. The town's chief of police expressly stated that he did not regard the situation as one which required the presence of a policeman (R. 151). This empirical demonstration of the peaceful character of the picket line and the fact that the words were not such as engendered breaches of the peace can not be ignored in determining whether speech is so inflammatory as to be barred.

Nor did either of the Arkansas courts below make a finding that a breach of peace was imminent or threatening. In the trial court, it was concluded that the strikers had forfeited their constitutional right, since, "in picketing the plaintiff's plant, [they] have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace . . ." (R. 13). The Supreme Court of Arkansas, on affirmance, rephrased the finding of the trial court as follows, ". . . the

whole pattern of conduct along the picket line discloses a clear design on the part of [strikers] to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results" (R. 202). The word "calculated" as used by both of the state courts appears to mean "tended" to cause a breach of the peace.³³

But "tendency" to cause a breach of the peace is not enough.³⁴ The standard for constitutional judgment of governmental restriction on speech is the clear and present danger test first enunciated by Justices Holmes and Brandeis in their opinion in *Whitney v. California*, 274 U. S. 357 (1927). The test as articulated in that opinion reads (p. 376):

"To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one. . . . In order to sup-

³³ The term "calculated" certainly did not mean design or plan. This is clear from the context of both the trial and Supreme Court of Arkansas opinions. In any event, the complaint expressly alleged that the conduct in issue "tends toward a breach of the peace and other disorder" (R. 3; see also R. 37). There is no evidence adverted to in the opinions, nor does the record contain any evidence to the effect that a breach of the peace was intended. The only evidence directly relevant on this point shows the contrary. The Amalgamated posted a notice at strike headquarters instructing the strikers to refrain from any violence or any activity which might cause any violence (R. 23, 33-34; see also R. 53).

³⁴ *Cantwell v. Connecticut*, 310 U. S. 296 (1940). See also *Bridges v. California*, 314 U. S. 252 (1941) and *Craig v. Harney*, 331 U. S. 367 (1947).

port a finding of clear and present danger it must be shown that immediate serious violence was to be expected or was advocated, or that past conduct furnished reason to believe that such advocacy was then contemplated."

This Court has adhered to and applied this standard to the free speech cases which have issued since.³⁵ That this is the standard of review in cases involving application of the "fighting words" doctrine was declared in *Cantwell v. Connecticut*, *supra*, where the "fighting words" doctrine was first expressed. In that case, a Jehovah's Witness, Cantwell, stopped two Catholics on the street and played a phonograph record which made an extreme attack on the Catholic Church. One of the Catholics testified that the effect of the record was to make him want to strike the player of the record, Cantwell. Cantwell was convicted of a common law breach of peace under which one might be found guilty of inciting others to a breach of the peace because he used statements which were *likely* to cause violence.

³⁵ Other cases applying the clear and present danger test include the following: *Terminiello v. Chicago*, 337 U. S. 1, 4 (1949); *Thomas v. Collins*, 323 U. S. 516, 529-530 (1945) ("Any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger."); *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, 639 (1943) ("The right of a state to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But freedoms of speech and of press, of assembly, and of worship may not be infringed on on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.").

In reversing the conviction, this Court, applying the clear and present danger test, held:

“ . . . although the contents of the [phonograph] record not unnaturally aroused animosity, we think that, in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the state, the petitioner's communication, considered in the light of the constitutional guarantees, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question.” 310 U. S. at 311.³⁶

Nor does the all embracing prior restraint here find its counterpart in the conviction under the narrowly drawn criminal statute involved in the *Chaplinsky* case, 315 U. S. 568. In *Chaplinsky*, decided two years after *Cantwell*, this Court upheld a conviction for the use of “fighting words” where the constitutional requisites set down in *Cantwell* were met: a narrowly drawn statute punishing specific conduct, the words involved were “not in any proper sense communication of information or opinion”, and the use of the words constituted an immediate threat to the peace. None of these factors are present in the instant case.

Chaplinsky, like Cantwell, was a member of the Jehovah's Witnesses, and had been engaged in distributing the literature of that sect and speaking on

³⁶ See also *Terminiello v. Chicago*, 337 U. S. 1 (1949), reversing a conviction under an ordinance which permitted “conviction of petitioner if his speech stirred people to anger, invited public dispute or brought about a condition of unrest.”

the streets of Rochester, New Hampshire. When the local citizenry complained to the City Marshal that Chaplinsky was "denouncing all religion as a racket" the City Marshal replied that Chaplinsky was "lawfully engaged" (p. 570). In the words of this Court, "some time later, a disturbance occurred and the traffic officer on duty at the busy intersection started with Chaplinsky for the police station but did not inform him that he was under arrest or that he was going to be arrested". Chaplinsky was not convicted for anything which he had said or done up to this time. The conviction was based solely on the language to the police officers while in their custody. At this point, Chaplinsky admittedly called the City Marshal "a damned racketeer" and "a damned Fascist" and "the whole government of Rochester are Fascists or agents of Fascists" (pp. 569, 570).

Chaplinsky was convicted in the Municipal Court of Rochester for violation of a state law which read:³⁷

"No person shall address any offensive or derisive or annoying word to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name."

This Court, accepting the interpretative gloss placed upon the statute by the Supreme Court of New Hampshire, found the statute as thus construed "narrowly drawn and limited to define and punish specific conduct". It thereupon concluded that "the appella-

³⁷ Chapter 378, Section 2 of the Public Laws of New Hampshire, reenacted without substantive change, N. H. Rev. Stat. Ann., Chap. 570:2 (1955).

tions 'damned racketeer' and 'damned fascist' are epithets likely to provoke the average person to retaliation, and thereby cause a breach of the peace". These are "fighting words"—words which in the language of the clear and present danger test tend to incite an immediate breach of the peace. . "Such utterances are no essential part of any exposition of ideas, and are of such slight value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order or morality." 315 U. S. at 572.

But the words used in the *Chaplinsky* case and the context in which they were used find no parallel in the instant case. In the first place, here, unlike *Chaplinsky*, the words were an "essential part" of the "exposition of ideas" of the strikers. It was an integral part of the argument advanced by the strikers to the non-strikers in an effort to persuade them to alter their course of conduct. In the *Chaplinsky* case, on the other hand, the words were not used in the context of discussion or exposition of ideas. Whether or not the words "fascist" or "racketeer" are words which will advance an idea or move a discussion along under certain circumstances is questionable. But they certainly did not do so in the circumstances involved in *Chaplinsky*. When Chaplinsky used the term "damned Fascist" and "damned racketeer" he was not engaged in the exposition of any idea either in these words or any other. He was, in plain terms, simply "cussing out" the police who had him in custody. Chaplinsky was not convicted for his discourse on the street corner in which he had denounced religion as a "racket"; he was convicted for his verbal assault upon the authorities while in their custody.

Chaplinsky was engaged in giving battle to the town's authorities, not from the rostrum, but while in their custody. This was not argument. This was, in effect, resistance to a police officer.

Compare *Cantwell's* conviction which rested on his use of some of the very words employed by Chaplinsky, particularly the word "racket". But Cantwell used the term in the exposition of an idea, an attack on the Catholic Church. It was its use in that context, expressive of Cantwell's opinion and beliefs on an important issue, which was constitutionally protected.

The term "scab" unlike "Fascist" or "racketeer" in the Chaplinsky context, is not a common curse, epithet or slur of imprecise meaning to be applied in any controversy. Scab is a term of precise meaning applied in labor controversies where, as here, men work while others withhold their services in concert, i. e., strike. See pp. 33-35, *supra*.

Scab is unquestionably a strong word overlaid with emotion. But in the realm of labor disputes, as in political and religious controversies, sharp differences may arise. "Instigated by emotion and impelled by deep conviction men always employ strong words." *Wood Mowing & Reaping Machine Co. v. Toohey*, 114 Misc. 185, 199, 186 N. Y. S. 95, 98 (Sup. Ct. 1921). Argument and persuasion are not limited to the language of the scholar. "Men gesticulate, on such occasions, and become excited and demonstrative." In the words of witness Jerome Bill Becker, "It is a terrible thing when you are trying to what we feel fight for your rights to see someone go in there and undercut you and hurt you because by going in and working and

fighting what they believe is right, you become terribly emotional and you yell" (R. 64).

Individual expression does not lose its constitutional protection because it encompasses an emotional appeal. This has long been recognized by this Court. See *Bridges v. California*, 314 U. S. at 268-69 (1941). What political campaign does not involve an emotional appeal? If nothing but discussion bereft of color or emotion were protected by the First and Fourteenth Amendments, their value in safeguarding popular expression of view would be slight.³⁸

Workingmen, particularly where, as here, education is most limited,³⁹ commonly address each other in something less elegant than the select phrases and the perfect diction of G. B. Shaw's Professor Higgins in *Pygmalion*. Their vocabulary is limited; their language direct and straightforward. "Strikers may talk in their own language; the plain, common, strong everyday language of the laboring man." Wood.

³⁸ *Martin v. Struthers*, 319 U. S. 141, 149 (1943) (concurring opinion); Chaffee, *Free Speech in the United States*, 43-44, 123-124 (1940); Jones, *Picketing and the Communication of Ideas*, 2 U. C. L. A. L. Rev. 212, 219-223 (1955).

In his noted work, Chaffee observed (pp. 43-44):

"As Cooley pointed out long ago, you cannot limit free speech to polite criticism, because the greater a grievance the more likely men are to get excited about it, and the more urgent the need of hearing what they have to say. The normal test for the suppression of speech in a democratic government, Judge Hand insists, is neither the justice of its substance nor the decency and propriety of its temper, but the strong danger that it will cause injurious acts."

³⁹ According to the 1950 census, the median school year completed by those over 25 in Cross County, Arkansas, is only 6.9 years. U. S. Dept. of Commerce, Bureau of the Census, *Census of Population: 1950*, Volume II, *Characteristics of the Population*, Part 4, Arkansas.

Mowing & Reaping Machine Co. v. Toohey, supra. The term "scab" is just such language. In its use, a striker seeks to convey volumes of argument. And so with the strikers here. The term "scab" was germane to their discourse; it was at the core of that discourse. Further, it must be borne in mind that the strikers were understandably provoked by Rainfair's course of conduct in opposition to the strikers and the union of their choice, the Amalgamated. The strike came about because of what the employees had strong cause to believe were employer unfair labor practices. Several of the strikers had, as noted above, been refused reinstatement, they were the victims of industrial capital punishment. Under such circumstances, it was to be expected that feelings would run high.

Moreover, there is a serious question as to whether the non-striking employees even regarded the term "scab" as insulting (R. 67). Scab is not the kind of a word on which all men would agree. A union official or loyal union member would undoubtedly regard it as an insult (R. 43, 63). On the other hand, the strikebreakers might well be indifferent to its use or even consider it a "badge of honor" (R. 67). In short, its impact will be greatest upon those persons as to whom it is least likely to be applied—the union officer or loyal union adherent, and slightest against those to whom it is generally applied, the strikebreaker or anti-union worker.⁴⁰ In any event this certainly shows that "scab" is not a word which "men of common intelligence" would agree was a fighting word. It is certainly not a word which would

⁴⁰ Cf. dissenting opinion of Justice Jackson in *Kunz v. New York*, 340 U. S. 290, 299 (1951).

in every context be deemed an insult, a word historically associated with violence by those who utter it and those to whom it is addressed. *American Brake Shoe Co. v. Annunzio*, 405 Ill. 44, 90 N. E. 2d 831 (1950).

If a decision such as that here in issue were upheld, it would place impossible burdens on state courts and ultimately upon this Court as well. As Justice Cardozo once observed when sitting on the New York bench, "Indeed, there is a near approach to the ludicrous when a member of one union debating an industrial dispute with a member of another, is restrained by the solemn mandate of an injunction from stating his belief that the rival union is a scab". *Nann v. Raimst*, 255 N. Y. 307, 318, 174 N. E. 690, 695 (1931).

So, too, if the decision of the Arkansas Court is permitted to stand, each word hereafter used by pickets will have to be placed on the judicial scales and weighed. The courts will be placed in the "ludicrous" position of measuring one word against another—as, for example, evaluating the relative impact of the word "strikebreaker", "deserter", "traitor", "betrayor", "renegade", "judas", and a whole galaxy of synonyms and associated words.

But of even more importance, to permit the decision here involved to stand would compel individual employees and lower echelon union officials to make this same evaluation and search for the innocuous word or phrase, or, in the alternative, as is more likely, to forego any speech on the picket line so as to avoid

what occurred here, judicial condemnation and prohibition of all concerted activity.⁴¹

"When legislation or its application can confine labor leaders on such occasions to innocuous and abstract discussion of the virtues of trade unions and so becloud even this with doubt, uncertainty and the risk of penalty, freedom of speech for them will be at an end." *Thomas v. Collins*, 323 U. S. 516, 536 (1945).⁴² Restrictions should not be "permitted that cramp the feeling of freedom in the use of tongue or pen regardless of the temper or the truth of what may be uttered." *Bridges v. California*, 314 U. S. 252, 291 (dissenting opinion). What is at stake here then may not merely be the right of strikers to call strikebreakers "scab", but the very right of strikers to speak at all while on or near a picket line.

Counterposed against this overriding need of the strikers to express themselves by reference to strikebreakers as "scabs", is the very slight interest to be served by a ban of such terminology. The bar

⁴¹ Cf. *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376 (1945); *N. L. R. B. v. Sterling Furniture Co.*, 202 F. 2d 41, 9th Cir. 1953).

⁴² See also, *Culinary Workers Union v. Eighth Judicial District Court*, 66 Nev. 166, 207 P. 2d 990, *rehearing den.* 66 Nev. 202, 210 P. 2d 454 (1949), where the Supreme Court of Nevada held that the Federal Constitution will not permit an injunction against the use of a picket sign saying "Unfair to Labor". The court stated at 207-P. 2d at 995:

"Just as the judiciary cannot validly restrict the expression of grievances by union members to the small area of employers for whom they work, a court may also not require workers to couch their views and opinions in legal, correct and accurate words, for their speech is aimed at persuasion, and persuasion demands at times artful, at times even exaggerated language."

Accord: *Blossom Dairy Co. v. Int'l. Bro. of Teamsters*, 125 W. Va. 165, 23 S. E. 2d 645 (1942); *Wood Mowing & Reaping Mach. Co. v. Toohcy*, 114 Misc. 185, 186 N. Y. S. 95 (Sup. Ct. 1921).

here, whatever its purposes, plainly is not a denial of the right to speak in order to safeguard some vital interest of the state or prevent a serious and immediate threat to the peace. Actually, it merely seeks to insulate the strikebreakers from the annoyance of being called "scab", to insulate them from the moral and social pressures implicit in that term and in the act of picketing itself. But as discussed above (pp. 40-42), these moral and social pressures are the essence of the constitutional freedom of expression. They are certainly essential to the rights granted workingmen to associate themselves in unions of their own choosing for their economic and social betterment, one of the great concerns of our democratic society. *American Communication Assoc. v. Douds*, 339 U. S. 382, 417 (1950) (concurring opinion). A state may not restrict or prevent such speech to relieve the annoyance or discomfiture which a strikebreaker may experience as a result of it. See *Terminiello v. Chicago*, 337 U. S. 1, 4 (1949).

Before concluding this aspect of the argument, summary reference is again made to the few isolated comments to which the general discussion above may not be wholly applicable. A few of these utterances, if addressed by a man to a woman, might have been considered vulgar. When taking place between women, however, who have grown up together in the same rural community, who have attended the same school and who now attend the same church, they appear to be little more than good natured banter. In this category are the jocular remarks addressed to one of the women who was pregnant (R. 136) and to another whose dress was cut somewhat revealingly. (See pp. 13-15, *supra*). As to occasional or

isolated terms which might be regarded as gratuitous and irrelevant insults and not part of the exposition of ideas by strikers to non-strikers, these are not appropriate subjects for injunction here because they were, as the lower court's opinion discloses, "isolated and sporadic". Moreover, the nomenclature of the strike is not the nomenclature of the parlor. These occasional utterances fall into the category of "rough and tumble" speech associated with strikes, in the course of which occasional loose and even reckless language is properly discounted. (*N. L. R. B. v. Electrical Workers*, 346 U. S. 464, 480 (1953) (dissenting opinion). It is part of the conventional give-and-take associated with political and economic controversies. *Cafeteria Employees Union v. Angelos*, 320 U. S. 293 (1943).

II

Irrespective of whether the speech used by the strikers is deemed constitutionally protected, the all inclusive injunction, barring all picketing, speech, assembly and other concerted activity, entrenches upon the rights guaranteed the strikers by the Fourteenth Amendment.

A. The Scope of the Injunction.

The injunction affirmed by the court below permanently enjoined the petitioners "and each of them, and their agents and employees, and each and every one of the officers and members of Amalgamated Clothing Workers of America, CIO and all other persons in sympathy, or acting in concert with them" . . . "while on, adjacent to or near [Rainfair's] premises"

from speech, assembly, and all other organizational and concerted activity. The court below indiscriminately swept aside all forms of striker activity, because, in its view, a limited phase of the strikers' speech was beyond lawful limits. This indiscriminate ban cannot stand.

"This court has uniformly concluded that if a rule of state law is not confined to the evil which may be dealt with but places an indiscriminate ban on public expression that operates as an overhanging threat to free expression, it must fall without regard to the facts of the particular case. This is true whether the rule of law be declared in a statute or in a decision of a court." (*Bridges v. California*, 314 U. S. 252, 296 (1941) (dissenting opinion).)⁴³

The evils of the Alabama statute involved in *Thornhill v. Alabama*, 310 U. S. 45 (1940)—an indiscriminate bar to all picketing—are indeed multiplied by the instant injunction. This injunction carries with it the certainty of swift punishment in contempt for any violation of its comprehensive terms. This sweeping decree subjects all activity, legitimate no less than illegitimate, to the peril of prosecution for contempt; "and therefore the injunction becomes in effect a penal code, enacted, interpreted and enforced by a single judge without the constitutional securities available to those accused of crime." Frankfurter and Greene, *Labor Injunction*, 8 *Encyclopedia of Social Sciences* 653, 655.

⁴³ See also concurring opinion of Mr. Justice Douglas in *Bakery & Pastry Drivers & Helpers, Local 802 v. Wohl*, 315 U. S. 769, 776 (1942).

The state court injunction here, unlike a statute, was not encased in the armor of a democratic expression of popular will; nor did it, on the other hand, possess the virtue normally associated with judicial decree, careful formulation designed to contain the precise evil disclosed. It was drawn without reference to the purported substantive evils.

B. Peaceful Picketing Could Be Permitted Without Creating an Atmosphere of Fear or Coercion.

Where, as here, an injunction rests on a finding that the strikers employed illegal or improper means, the rules governing regulation of the conduct are to be found in this Court's decision in *Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U. S. 287 (1941). So the court below, in its affirmance of the injunction, sought to justify its all inclusive ban upon that decision.

Recognizing, however, that there is not here the background of violence present in the *Meadowmoor* case, the court below sought to achieve the same result by conjuring up a finding that there is an "enmeshment in verbal abuse" and therefore all speech, picketing and other forms of communication and concerted activity must cease. The doctrine set forth in *Meadowmoor* is plain. It does not permit of such misinterpretation.

Under *Meadowmoor*, all picketing—here all strike and union activities near the plant—may be prohibited only when:

1. The picketing is enmeshed in a background of

contemporaneous violence comprising the very texture and process of the picketing; *and*

2. The violence must be of such severity and frequency as to generate a "momentum of fear" which would "survive" even though future picketing were wholly peaceful.

The essence of *Meadowmoor* is violence. In summarizing the findings of fact in *Meadowmoor* this Court stated (312 U. S. at 291-92):

"Beside peaceful picketing of the stores handling Meadowmoor's products, the master found that there had been violence on a considerable scale. Witnesses testified to more than fifty instances of window-smashing; explosive bombs caused substantial injury to the plants of Meadowmoor and another dairy using the vendor system and to five stores; stench bombs were dropped in five stores, three trucks of vendors were wrecked seriously injuring one driver, and another was driven into a river; a store was set on fire and in a large measure ruined; two trucks of vendors were burned; a storekeeper and a truck driver were severely beaten about the head while being told 'to join the union'; carloads of men followed vendors' trucks, threatened the drivers, and in one instance shot at the truck and driver. In more than a dozen of these occurrences, involving window-smashings, bombings, burnings, the wrecking of trucks, shootings, and beatings, there was testimony to identify the wrong doers as union men."

The picketing was so enmeshed in past violence that it could not in the future be disassociated from that

violence.⁴⁴ Under the circumstances of *Meadowmoor*, picketing, however peaceful it might appear to the stranger unaware of its background, could never be so regarded by the viewer with knowledge of what had taken place. Implicit in the peaceful picketing was the menace of associated violence. That which might otherwise have been deemed peaceful was, by this process of continuous association, transmuted into violence.

In the instant case, irrespective of how this Court may regard the language used by the strikers in terms of the free speech protection of the Fourteenth Amendment, it had no emanations or consequences which would survive its discontinuance. There was no after image. Certainly no after image of violence. The picketing and the speech in issue were separable. Assuming the speech here in issue lay outside the bounds of protected free speech and was properly enjoined, the picketing, assembly and all other forms of written and spoken communication could continue wholly free of menace to the beholder.

In sum, the characterization of the strikebreakers as "scabs," whatever its constitutional status, created no fear of violence in the listeners. Certainly it did not generate such fear, the momentum of which would survive its discontinuance.

Moreover, to strike down the injunction in the instant case does not mean, assuming the illegality of

⁴⁴ As the Supreme Court of Illinois concluded in *Meadowmoor*, the violence "could not help but have the effect of intimidating the persons in front of whose premises such picketing occurred and of causing them to believe that non compliance could possibly be followed by acts of unlawful character." 371 Ill. 377 at 390, 21 N. E. 2d 308, 315.

the strikers' speech, that such speech must go unregulated. First, it may be the subject of a limited injunction. Secondly, if it later developed that any aspect of the strikers' speech "resulted in disorder or violence", *Kunz v. New York*, 340 U. S. 290 at 294 (1951), Arkansas could look to "appropriate public remedies to protect the peace and order of the community." Any conduct of the strikers herein *not constitutionally privileged* may be subjected to punishment under several Arkansas statutes. E. g., ARK. STAT. (1947) Sec. 41-1412. Assembly with intent to employ force or violence for illegal purposes is punishable by imprisonment up to one year. ARK. STAT. (1947) Sec. 41-1402. Arkansas also has a statute, applicable only to labor disputes, which provides a penalty of imprisonment from one to two years for assembling and employing force or violence to prevent any person from engaging in any lawful vocation. ARK. STAT. (1947) Sec. 81-207. The statute also punishes participation in such an assembly with intention that force or violence shall be employed, although the participant himself committed no act of violence.⁴⁵

Arkansas has more than adequate means to protect the public order, if it desires to employ them. "If it be said that these means are less efficient and convenient than [total suppression] . . . , the answer is that considerations of this sort do not empower a municipality [or state] to abridge freedom of speech

⁴⁵ See *Cole v. Arkansas*, 338 U. S. 345 (1949).

and press." *Schneider v. State*, 308 U. S. 147 (1939).⁴⁶ If Arkansas feared a breach of the peace, it need only have initiated appropriate criminal proceedings *if and when the danger became imminent*. But it could not under the guise of such fear prohibit all future speech and assembly.

The differences between censorship and complete prohibition, either of subject matter or of the individuals participating, upon the one hand, and regulation of the conduct of individuals in the time, manner and place of their activities upon the other, are decisive. For while freedom from previous restraint cannot be regarded as exhausting the scope of constitutional liberty, "the prevention of that restraint was a leading purpose in the adoption of the constitutional provision." *Lowell v. Griffin*, 303 U. S. 444, 451 (1938). See also *Near v. Minnesota*, 283 U. S. 697 (1931) and *Burstyn, Inc. v. Wilson*, 343 U. S. 495 (1952).

The importance of this distinction between prior suppression and subsequent punishment is highlighted by a comparison of *Feiner v. New York* and *Kunz v. New York*, 340 U. S. at 290 and at 315 (1951), decided by this Court on the same day. In *Feiner v. New York*, a conviction for breach of peace was sustained where danger of violence was imminent. In *Kunz v. New York*, however, an action by a state

⁴⁶ Cf. *Peoale v. American Automobile Insurance Co.*, 132 Cal. App. 2d 317, 282 P. 2d 559, cert. den. 350 U. S. 886 (1955), holding that the state may not constitutionally enjoin advertisements attacking high damage awards by juries. The appropriate constitutional remedy is a prosecution for interfering with justice.

to *prohibit future speech*, because violence had actually occurred at past meetings, was declared to be a violation of the Constitution. This Court stated "There are appropriate public remedies to protect peace and order of the community if appellant's speeches should result in disorder or violence." 340 U. S. at 294.

It would have been equally unavailing for the court below to have attempted to rest the all embracing injunction on the "isolated and episodic" incidents adverted to in the opinion. The court below appears to recognize that *Meadowmoor* does not permit an all-inclusive ban of conduct, otherwise constitutionally safeguarded, because there are "isolated and episodic" incidents. The court below, however, referred to these incidents, seven in number, *in passim*. Consideration of these incidents in the *Meadowmoor* frame of reference, however, makes plain that they were not only "isolated and episodic", but they were neither contemporaneous with the activity enjoined nor acts of violence.

As to these seven incidents culled from the entire record, four occurred during an earlier picketing in May (R. 197).⁴⁷ Their unimportance is attested by the fact that they were not referred to in Rainfair's

⁴⁷ These four incidents in the words of the court below were as follows:

1. "The plant manager was followed by the strikers every time he left the plant in his car." (There was no evidence that he was ever harmed or threatened.)
2. One of the pickets told him [the plant manager] "she was going to wipe the sidewalks clean with him and send him back to Wisconsin." (The Court below failed to note, however,

Complaint nor was there any indication that they were even considered by the trial court.

Of the other three incidents, two involved minor property damage and occurred the night before the June picketing started—the tire puncturing and the so-called “snake” incidents already discussed (see footnote 9, page 9, *supra*). The final incident occurred when, in the words of the court below, “Two strikers drove by a house where two workers were visiting and one of the strikers shouted, ‘You gals better check your sheets tonight. There might be a snake in them.’” This, as discussed above, was regarded as “a joke” (see page 13, *supra*):

Thus, even telescoping these isolated incidents in the same manner as the court below, they do not add up to a basis for any restraint. Certainly, there is no basis for an all-encompassing injunction under the dictates of *Meadowmoor*. There was not a single incident of violence to the person, nor any threat of such violence. The incidents were “isolated and episodic” and removed in time from the picketing in issue, and, unlike *Meadowmoor*, the incidents were not of the “texture and process” of the picketing. As

that the plant manager testified he did not regard the statement—made to him by a woman—as a threat (R. 128.)

3. “He [the plant manager] had so many anonymous telephone calls at his home after 9:00 P.M. that he had to have the phone disconnected.” (There was no evidence connecting the calls to the strikers.)
4. “Nails and roofing tacks were strewn over the parking area of Appellee’s [Rainfair’s] plant and the driveways at the homes of the plant manager and twelve of the women employees.” (Here, again, the acts were not attributed to the strikers, nor repeated during the June picketing.)

a matter of fact even the incidents themselves were not of the "texture and process" of violence.⁴⁸

Especially significant in this respect is the holding in *Pezold v. Amal. Meat Cutters*, 54 Cal. App. 2d 120, 128 P. 2d 611 (1942), where the California Supreme Court, confronted with picketing accompanied by occasional blocking of entrances and veiled threats of violence, held:

"The picture, then, while not that of a peaceful, lawful, picket line engaging only in practices protected by the state and federal constitutions, is not yet one in which acts of violence have so stamped themselves on the scene that for a time at least even peaceful picketing will reflect the events of the past and appear to threaten the personal safety of customers or others, with the result that all picketing must be enjoined in order to afford the plaintiff adequate protection. . . ."

54 Cal. App. 2d at 125, 128 P. 2d at 615.

⁴⁸ The triviality of the incidents referred to in the instant case is highlighted by a comparison with the facts of cases in other state courts in which blanket injunctions were denied. *Ellingsen v. Milk Wagon Drivers*, 377 Ill. 76, 35 N. E. 2d 349 (1941) (decision of the Illinois Supreme Court in a case growing out of the same dispute as the *Meadowmoor* case); *Weyerhaeuser Timber Co. v. Everett District Council*, 11 Wash. 2d 503, 119 P. 2d 643 (1941); *Mason & Dixon Lines v. Odom*, 193 Ga. 471, 18 S. E. 2d 841 (1942); *Pezold v. Amalgamated Meat Cutters*, 54 Cal. App. 2d 120, 128 P. 2d 611 (1942); *Hotel & Restaurant Employees v. Greenwood*, 249 Ala. 265, 30 So. 2d 696 (1947); *Rowe Transfer & Storage Co. v. Teamsters Union*, 186 Tenn. 265, 209 S. W. 2d 35 (1948); *H. O. Canfield Co. v. United Construction Workers*, 136 Conn. 293, 70 A. 2d 547 (1949); *Missouri Cafeteria, Inc. v. McVey*, 362 Mo. 583, 242 S. W. 2d 549 (1951); *Grist v. Textile Workers*, 78 R. I. 338, 82 A. 2d 402 (1951); *Wilkes Sportswear, Inc. v. ILGWU*, 389 Pa. 164, 110 A. 2d 418 (1955).

In short, unlike *Meadowmoor*, "the picketing in this case was [not] set in a background of violence"; and there was no "momentum of fear" generated by past violence" let alone such momentum of fear as to "survive" the discontinuance of the so-called "verbal abuse". Continued peaceful picketing, whatever the constitutional status of the strikers' speech here in issue, will not, reflecting "the events of the past", "threaten the personal safety" of the non-striking employees. *Pezold v. Amal. Meat Cutters, supra*.

III

The injunction herein violates the defendants' freedom of assembly as guaranteed by the Fourteenth Amendment.

Another fundamental right involved in this case is the right of petitioners to assemble. "The right of peaceable assembly is a right cognate to those of free speech and free press and is equally fundamental." *De Jonge v. Oregon*, 299 U. S. 353, 364 (1937). Yet, the court below enjoined the strikers "from loitering and congregating around and under the tent and upon the property that is used as the union headquarters, located directly across Rowena Street in front of plaintiff's premises". This restraint is part of the total design of the injunction to prevent any striker or union adherent, or their sympathizers, from engaging in any form of communication, even communication with each other, near the struck plant.

This Court has indicated that a state may not constitutionally "penalize the promotion, encouragement

or furtherance of peaceful assembly at or near any place where a labor dispute exists." *Cole v. Arkansas*, 338 U. S. 345, 353 (1949).⁴⁹

If, as demonstrated above in Point I, these oral utterances were not subject to restraint or injunction, it necessarily follows that the companion right to free speech, freedom of assembly, is also beyond restraint.

"It is . . . in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when the right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances." *Thomas v. Collins*, 323 U. S. 516, 530.

All these rights, though not identical, are inseparable. They are cognate rights, *cf. De Jonge v. Oregon*, *supra*, and therefore are united in the First Amendment's assurance.⁵⁰

But assuming *arguendo*, that any conduct of the strikers on their property across from Rainfair's plant is subject to regulation by state court injunction, there is not, as already demonstrated, a justification for barring every assembly in the future, irrespective of its lawful and peaceful character and the circumstance under which it takes place. The con-

⁴⁹ See *Thomas v. Collins*, 323 U. S. 516 (1945) and *Hague v. C.I.O.*, 307 U. S. 496 (1939), emphasizing the importance of the right of assembly in labor disputes. *Cf. Bridges v. California*, 314 U. S. 252 (1941).

⁵⁰ *Cf. Annals of Congress*, 759-760.

stitutional rejection of prior restraints on speech applies as well to assembly. *Hague v. C. I. O.*, 307 U. S. 496 (1939); *Seller v. Johnson*, 163 F. 2d 877 (8th Cir. 1947), *cert. den.* 332 U. S. 851 (1948).⁵¹

This Court has upheld the right of unions to conduct meetings on public property. *Hague v. C. I. O.*, *supra*. Cf. *Thomas v. Collins*, *supra*. Certainly similar union meetings on their own private property must be permitted. The restraint on use of petitioners' property because of its proximity to the Rainfair plant is a clear violation of petitioners' rights under the Fourteenth Amendment.

IV

The National Labor Relations Board has exclusive jurisdiction over the speech and other concerted activity here involved and, accordingly, the state courts below are without jurisdiction to regulate or enjoin such speech and concerted activity.

With the passage of the Taft-Hartley Act in 1947,⁵² large areas of industrial relations of businesses affecting interstate commerce were withdrawn from state regulation and control. The legislative history of Taft-Hartley shows that Congress, canvassing the field of labor-management relations, considered proposals which reached almost every practice and problem that had arisen in the field. Adopting some proposals, modifying others, but rejecting still more, Congress finally formulated a definition of rights;

⁵¹ See *Schneider v. State*, 308 U. S. 147 at 162 (1939).

⁵² 61 Stat. 136, 29 U. S. C. Sec. 151 *et seq.*

duties, liabilities and immunities; it selected what it considered to be the appropriate remedies and forums for their vindication.⁵³ Congress formulated a comprehensive code of conduct which, in addition to protecting the rights of employees to organize and engage in concerted activity, outlawed certain aspects of labor union activity by introducing a series of unfair labor practices against unions. In so doing, the Congress exclusively reserved to the National Labor Relations Board in the first instance, and thereafter to the federal courts, a wide range of employee and union activity and, accordingly, decreed this range of activity closed to the states.

This Court in a series of decisions handed down since the passage of the Taft-Hartley Act, particularly since this Court's decision in *Garner v. Teamsters Union*, 346 U. S. 485 (1953), has proceeded to draw a line of demarcation between the broad area in which only the Labor Board may operate and the area in which the states are still free to operate. In the course of this litigation, it has become progressively clear that while "Congress did not [by the Taft-Hartley Act] exhaust the full sweep of legislative power over industrial relations given by the Commerce Clause" (*Weber v. Anheuser Busch, Inc.*, 348 U. S. 468, 480 (1955)), the area over which Congress did exercise its legislative power was wide indeed and, correspondingly, the area within which the states might continue to operate, narrowly drawn. The powers which the states had exercised in the field of

⁵³ The Hartley Bill, H. R. 3020, which was passed by the House of Representatives but not by the Senate, went far beyond the ultimate Taft-Hartley Act in the drastic restrictions which it proposed to impose on union activities, including strikes and picketing.

industrial relations had to give way to the paramount need that interstate industrial enterprises be subjected to uniform rules uniformly applied. Uniform administration of a national policy of labor relations required that the single expert tribunal designated by the Congress, the National Labor Relations Board, be given exclusive authority. It is now the general rule that industrial relations involving interstate enterprises fall within the exclusive purview of the National Labor Relations Board, and that only in certain limited areas and under exceptional circumstances are the states still free to exercise residual powers.

In terms of this case, the following rules definitively enunciated by this Court are controlling with reference to the state court's residual powers:

First, "a State may not prohibit the exercise of rights which the federal Acts protect." (*Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468 at 474).

Second, a State may not, in furtherance of its public policy, irrespective of the basis on which such declaration of policy rests, enjoin conduct which has been made an unfair labor practice under federal statute (See *Weber, supra*, 348 U. S. at pp. 480-481), *except* where there is "mass picketing, violence and overt threats of violence." (*United Auto Workers v. Wisconsin Board*, 351 U. S. 266, 274 (1956).)

It is in terms of these preemption precepts that the authority of the court below to issue an all embracing injunction prohibiting all speech, picketing, assembly and all other organizational and concerted activities near the plant must be considered. The court

below, rejecting the contention that it was without authority over the controversy, or any part thereof, conferred upon itself an all inclusive grant of authority to consider the entire controversy and to issue a total ban on all strike and union activity near the plant on the ground that the means employed by the strikers, purported excesses in speech, was illegal (R. 202-203). In terms of the foregoing precepts, the court below's arrogation of authority to itself is without basis and the injunction cannot stand.

On these precepts, it must be concluded that the speech and other concerted activities of the strikers constitute protected or proscribed activity within the meaning of the National Labor Relations Act, in either of which events the conduct falls within the jurisdiction of the National Labor Relations Board and is, in the first instance, a matter for Board determination. The state's residual powers do not come into operation since neither the speech or other conduct, nor any phase of such speech or conduct, involves "mass picketing, violence or overt threats of violence". Finally, even if it were assumed that a finding of "mass picketing, violence or overt threats of violence", was solidly based, such a finding would only confer authority on the state court to enjoin the misconduct found, the "mass picketing, violence, or overt threats of violence". It would not confer authority on the state court to enjoin orderly and peaceful speech and activity protected under the National Labor Relations Act. In short, whether the finding of the court below as to the phase of the speech here in issue is or is not without basis, the lower court's authority cannot extend beyond curbing that phase of the speech.

A. The Speech Enjoined Constituted Either a Protected Activity or an Unfair Labor Practice and, in Either Event, Falls Within the Purview of the National Labor Relations Board.

The affirmance of the trial court's injunction by the court below essentially rested on the strikers' use of the word "scab" and variants of that word in seeking to dissuade the strikebreakers from continuing to work. As already discussed (pp. 33-35, *supra*), for strikers so to address strikebreakers, lies at the core of striker discourse; it is a classical term of such address. As such it constitutes a "concerted activity" within the protective grant contained in Section 7 of the Labor Act, and falls outside of the area over which the state has authority to act legislatively or judicially. As was noted in the summarization of prior rulings in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, this Court, resting on the preemption postulate of the pre Taft-Hartley decision in *Hill v. Florida*, 325 U. S. 538 (1945), has declared that a state may not prohibit or condition the exercise of rights which the federal act protects.

In two post Taft-Hartley cases, *Bus Employees v. Wisconsin Board*, 340 U. S. 383 (1951), and *Automobile Workers v. O'Brien*, 339 U. S. 454 (1950), this Court struck down state statutory strike procedures on the same general ground. In the *O'Brien* case, statutory strike notices and referenda, and, in the *Bus Employees* case, compulsory arbitration in public utilities, were struck down as in conflict with, and a denial of, rights guaranteed under Section 7 of the Taft-Hartley Act.⁵⁴

⁵⁴ Justice Frankfurter, in the *Weber* summarization of prior rulings indicates that *Garner* might also fall into this category of protective activity. 348 U. S. at 475.

As an integral part of strike activity, the speech in issue is protected "concerted activity" and consequently outside the realm of state court restraint. There may be no conflicting state court restraint or prohibition, irrespective of the label which the state court places upon such activity as a basis for state court incursion. But even if it were concluded that the speech in issue *might* not be protected activity, such speech partakes sufficiently of the character of protected activity so as to make it a matter for prior Labor Board determination. "Certainly if the conduct is eventually found by the National Labor Relations Board to be *protected (sic)* by the Taft-Hartley Act, the State cannot be heard to say that it is enjoining that conduct for reasons other than those having to do with labor relations." *Weber*, 348 U. S. at 480.

On the other hand, if the conduct is unprotected it may be proscribed as an unfair labor practice. The activity complained of might well fall within the ambit of the Taft-Hartley Act proscriptions. Section 8(b)(1) now gives the National Labor Relations Board broad regulatory powers with reference to strike activities. Included in this area of regulation is striker speech. This Court, in *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, 660-61 (1954), "assumed" that the union's use of threats of violence on a picket line to make employees join the union was a violation of Section 8(b)(1)(A). Until recently, though, the National Labor Relations Board, cognizant of the need of strikers forcibly to express themselves, has held that calling non-strikers "Dirty Scabs", "Dirty Bastards", "Dirty S. B.'s"⁵⁵ "Yellow Scab",

⁵⁵ *Int'l Longshoremen & Warehousemen's Union*, 79 N. L. R. B. 1487, 1505 (1948).

"Skunks", and "Rats",⁵⁶ did not constitute "restraint and coercion" under Section 8(b)(1)(A) of the Act. It held that such "vocally vented resentment" constituted privileged communication under Section 8(c) of the Act.

More recently the Board has given indication that it may undertake to circumscribe concerted activity more closely, and to censure what it regards as excessive language employed by pickets. Where the Board will draw the line between protected activity, activity which violates Section 8(b)(1)(A), or activity neither protected nor prohibited, is, as yet, far from clear. In a discrimination case under Section 8(a)(3), a Trial Examiner, whose decision was affirmed by the Board, found the line to be somewhere between the use of term "wop bastard" and "yellow", which the Trial Examiner regarded as protected speech, and ascribing to a non-striker "an act so foul as to be unmentionable", which he found unprotected. *Nutone, Inc.*, 112 N. L. R. B. 1153, 1173 (1955), *enf'd as modified, sub nom. United Steelworkers v. N. L. R. B.*, 243 F. 2d 593 (D. C. Cir. 1956), *cert. granted on an unrelated point*, 353 U. S. 921. Compare *N. L. R. B. v. Longview Furniture Co.*, 206 F. 2d 274 (4th Cir. 1953) with *Nashville Corp.*, 94 N. L. R. B. 1567, 1581-1582 (1951).

But whatever the result of the Board's deliberations, whether the Board ultimately finds that speech such as the strikers here used was protected or prohibited activity is, in the first instance, for the Board to decide.

But even if the speech here were neither protected nor proscribed activity, it would still be outside state

⁵⁶ *Perry Norvell Co.*, 80 N. L. R. B. 225, 242 (1948).

court authority. *Retail Clerks Int'l. Assn. v. Newberry Co.*, 352 U. S. 987 (1957), *reversing per curiam*, 78 Id. —, 298 P. 2d 375 (1956), which had held that a state court may assert jurisdiction where the activity in question is found by the state court to be neither prohibited nor protected. As this Court declared in *Garner*, 346 U. S. at 499-500:

"The detailed prescription of a procedure for restraint of specified types of picketing would seem to imply that other picketing is to be free of other methods and sources of restraint. For the policy of the National Labor-Management Relations Act is not to condemn all picketing but only that ascertained by its prescribed processes to fall within its prohibitions. Otherwise it is implicit in the act that the public interest is served by freedom of labor to use the weapon of picketing. For a state to impinge on the area of labor combat designed to be free is quite as much an obstruction of federal policy as if the state were to declare picketing free for purposes or by methods which the federal Act prohibits."

If Congress, which prior to the passage of the Taft-Hartley Act considered the entire field of activity with respect to strikes and picketing, left certain phases of that activity free of statutory ban or protection, Congress intended that such phases of picketing and strike activity should not only be free of federal regulation and control, but state regulation and control as well.

Where the facts reasonably bring the controversy within the scope of the National Labor Relations Act, "the State Court must decline jurisdiction in

deference to the tribunal which Congress has selected for determining such issues in the first instance". *Weber, supra*, 348 U. S. at p. 481. It is not now "necessary or appropriate . . . to surmise how the National Labor Relations Board might have decided this controversy had [Rainfair] presented it to that body. The primary duty of that decision lies with the Board, not with this Court." *Garner v. Teamsters Union*, 346 U. S. at 489. Uniform administration of a national policy under circumstances such as are here present, particularly where the Labor Board has already taken hold of a substantial phase of the controversy, and the avoidance of conflict and confusion, requires that the complex statutory interpretations called for in preemption cases be made by the Labor Board.

B. Since Striker Speech Here Involved Lies Within Jurisdiction of the National Labor Relations Board and Since There Is No Violence, Overt Threats of Violence or Mass Picketing, State Court Is Without Authority to Enjoin.

The decisions of this Court have made it clear that the regulatory power of the States over conduct falling within the jurisdiction of the National Labor Relations Board is narrowly limited to regulation of acts of "violence, overt threats of violence, and mass picketing." *United Auto Workers v. Wisconsin Board*, 351 U. S. 266 (1956). See also *Weber v. Anheuser Busch, Inc.*, 348 U. S. 468. This residue of state power derives solely from the state's "historic powers over such traditionally local matters as public safety and order and the use of streets and highways." *Allen Bradley Local v. Wisconsin Board*,

315 U. S. 740, 749 (1942); *Garner v. Teamsters Union*, 346 U. S. at 488.

Demonstrative of the limited zone in which the states may continue to exercise concurrent power is this Court's opinion in *Weber v. Anheuser Busch, Inc.* In the *Weber* case, the Missouri state courts had found that the "picket line was so placed and maintained that it prevented the movement of railroad cars into and out of plaintiff's premises by a common carrier without danger of physical injury to the pickets and the movement of the cars was stopped for that reason"; that the pickets "were upon the railroad tracks leading into and out of plaintiff's plant"; that "the pickets would not clear the railroad tracks". *Anheuser-Busch, Inc. v. Weber*, 364 Mo. 573, 580, 581, 265 S. W. (2d) 325, 329, 330. Nonetheless, this Court in striking down an attempt by the state to regulate, held the case did not involve "the kind of mass picketing and overt threats of violence which under the *Allen-Bradley Local* case gave the state court jurisdiction". 348 U. S. at 482. Thus in *Weber*, this Court plainly indicated that it would strictly apply the rules allowing for state court entry into the field of industrial regulation. This is in apparent recognition of the fact that a less rigid rule would lead to a progressive and rapid undermining of the elaborate preemption principles enunciated by this Court.⁵⁷

⁵⁷ A New York Court, applying similarly strict rules of entry, held that the Labor Act precluded state court action. In that case, unlike here, on several occasions each day "the pickets shouted vile, obscene and threatening imprecations at employees entering and leaving the plant". The court held "these occasional shouts [to be] far short of constituting conduct which permits state courts to intervene in matters relating to interstate commerce over which the National Labor Relations Board possesses exclusive primary jurisdiction." *Howard Johnson's Inc. v. Block*, 155 N. Y. S. 2d 594 (Sup. Ct. 1956)..

Certainly, here, the strikers' speech cannot be considered "overt threats of violence which . . . give the state court jurisdiction". The speech, as discussed at length above, is devoid of any menace, let alone overt threats of violence. In the absence of violence, an overt threat of violence, or mass picketing, there is nothing in this case on which the court below may rest its assertion of jurisdiction. The court below is without authority over any part of the subject matter, let alone the entire controversy.

C. Even if Arkansas Had Jurisdiction Over One Phase of the Strikers' Activity, It Nevertheless Lacked Jurisdiction to Enjoin Peaceful Picketing and the Other Peaceful Concerted Activity of the Strikers. Such Activity Continues to Be Protected Activity Under the National Labor Relations Act and as Such Free of State Court Restraint.

But assuming that Arkansas had jurisdiction to enjoin a particular aspect of the strikers' conduct, the speech here in issue, the state court only has authority as to such speech, and the injunction may cover only such speech. A state may not, as Arkansas has done here, also extend its jurisdiction to regulate and restrain activities under the National Labor Relations Act and subject to the exclusive jurisdiction of the National Labor Relations Board.

In *Weber v. Anheuser-Busch, Inc.*, this Court underscored the distinction between a total prohibition of all activity and restraint properly confined to overt threats of violence or mass picketing. After holding that the activity in *Weber* discussed immediately above (see p. 80, *supra*) did not amount "to the kind of mass picketing and overt threats of violence which,

under the *Allen-Bradley Local* case, gave the state court jurisdiction," this Court added, "In any event, the state injunction enjoined all picketing". 348 U. S. at 482.⁵⁸ Here, the state court injunction enjoined all activity, not only "all picketing".

A number of state courts have recognized that jurisdiction of part of a controversy does not confer jurisdiction over the entire controversy. See e. g. *Busch & Sons, Inc. v. Retail Union of New Jersey*, 15 N. J. 226, 104 A. 2d 448 (1954); *United Mine Workers v. Golden Cycle Corp.*, 300 P. 2d 799, 31 L. C. § 70, 182. (Colo. 1956); *National Electric Corp. v. United Mine Workers*, 279 S. W. 2d 808 (Ky. 1955). The results of these cases are in accord with the desired balance of federal-state jurisdiction in labor disputes. The state exercises its traditional jurisdiction over public order and use of highways vis à vis mass picketing and violence, but leaves to the specialized agency designated by Congress, the National Labor Relations Board, the initial task of ruling upon the legality of peaceful concerted activities.⁵⁹

⁵⁸ See also *Amalgamated Meat Cutters v. Fairlawn Meats, Inc.*, 353 U. S. 20 (1957).

⁵⁹ As pointed out above (pp. 66-69), there is no element of enmeshment here as that term is employed in *Meadowmoor* since this case is wholly devoid of violence—either of the kind or frequency involved in *Meadowmoor*. But even if the violence in this case were of the same type and frequency as that involved in *Meadowmoor*, it is doubtful as to whether the protective canopy which the Taft-Hartley Act has thrown over the accompanying peaceful activity would be withdrawn. It may be well that the statutory protections of peaceful activity are not forfeited even though the accompanying activity is surcharged with violence or overt threat of violence. See Cox, *Labor-Management Relations in the Supreme Court, October Term 1955 in Proceedings of Labor Relations Section, American Bar Assn.* 5 at p. 25 (1956). The standards applied in testing whether the Fourteenth Amendment protections do not apply are not necessarily the standards for determining whether preemption does not obtain.

Nor does *Allen Bradley Local v. Wisconsin Board*, 315 U. S. 740, on which the Court below relies, or *United Auto Workers v. Wisconsin Board*, *supra* suggest otherwise. In both of these cases, despite the existence of incidents of aggravated violence and mass picketing, the injunction barred only the mass picketing and specifically permitted peaceful picketing.

The jurisdiction of the state is limited solely to the element of violence, mass picketing or overt threat of violence: the rest of the controversy remains within the exclusive jurisdiction of the Labor Board. In the discharge of the statutory function exclusively entrusted to it, the Labor Board continues to determine the legality of peaceful and orderly picketing and other concerted activity either in unfair labor practice proceedings instituted by a union or by an employer.

Rainfair could have taken its complaints to the Labor Board (see sections 8(b)(1)(A) and 8(b)(2)). But Rainfair, instead, chose to seek relief in the state courts and, the state court, in turn, made the very determination which was exclusively delegated to the Labor Board. By issuing a blanket injunction against all picketing, it rendered moot any future decision of the Labor Board upholding the validity of the strikers' conduct and drastically impaired the strikers' organizational efforts.

The evil in permitting such state action was forcibly demonstrated in *N. L. R. B. v. Thayer Co.*, 213 F. 2d 748 (1st Cir. 1954), *cert. den.* 348 U. S. 883 (1955). There, a state court first enjoined all picketing "on the single ground that the picketing was conducted in

an illegal manner, being violent and destructive of property." 213 F. 2d at 751. As the Court of Appeals for the First Circuit found, "The injunction broke up the strike . . ." *Ibid.* After the refusal of the company to reinstate the striking employees, unfair labor practices charges were filed. First the National Labor Relations Board and, then the Court of Appeals on petition for enforcement found that the picketing activity which the state court condemned was, in fact, protected concerted activity under Section 7 of the Labor Act. Thus, although the strikers conduct was vindicated by the statutory agency and the federal court, the state court injunction effectively denied the strikers their right to organize into a union of their choice and to engage in concerted activity.

If Rainfair had proceeded to submit the subject matter of its state court complaint as charges to the Labor Board, the Board, in evaluating the strikers' speech, would have considered Rainfair's provocative actions before and during the strike. See *Thayer, supra* at p. 755. But even assuming that it found such charges to have merit, it would have carefully delineated between that phase of the activity on which the charges were based and the protected concerted activity. The striker speech, if found to constitute "restraint and coercion" in the terms of 8(b)(1)(A) would have been made the subject of a cease and desist order, and the remaining activity, the peaceful picketing and assembly, would, as protected activities, have been permitted to continue without hindrance or restraint.⁶⁰

⁶⁰ See, e. g., *Int'l Longshoremen & Warehousemen's Union*, 79 N. L. R. B. 1487 (1948); *Perry Norvell Co.*, 80 N. L. R. B. 225 (1948).

Board orders must be carefully framed in terms of the substantive evils found to exist. The existence of an unfair labor practice does not give the Board a license to strike down all activities. A finding of an unfair labor practice does not constitute a forfeiture of the right to engage in activities unrelated to the unfair labor practice, certainly not activities affirmatively sanctioned by the Taft-Hartley Act and protected under Sections 7 and 13.

The principle governing the scope of Board orders was laid down by this Court in *N. L. R. B. v. Express Publishing Co.*, 312 U. S. 426 (1941)⁶¹ as follows:

“It is a salutary principle that when one has been found to have committed acts in violation of a law he may be restrained from committing other related unlawful acts. But we think that without sacrifice of that principle, the National Labor Relations Act does not contemplate that an employer who has unlawfully refused to bargain with his employees shall for the indefinite future conduct his labor relations at the peril of a summons for contempt on the Board’s allegation, for example, that he has discriminated against a labor union in the discharge of an employee, or because his supervisory employees have advised other employees not to join a union.”

With the passage of the Taft-Hartley Act and the inclusion of a series of union unfair labor practices, these principles became equally applicable to Board

⁶¹ Accord: *May Dept. Stores Co. v. N. L. R. B.*, 326 U. S. 376 (1945).

orders issued in restraint of union unfair labor practices.⁶²

Plainly, if the Board may not include in its remedial orders directives with reference to unrelated unfair labor practices, it certainly may not take any action which would "interfere with or impede or diminish in any way the right to strike," in contravention of the terms of Section 13 of the Taft-Hartley Act. This statutory mandate cannot be circumvented by the simple expedient of recourse to the state courts instead of the Labor Board.

The potentialities of collision between state courts and the Labor Board with which this Court has been much concerned have, in the instant case, materialized. As noted in the Statement (see p. 8, *supra*), at the decisive period immediately preceding the National Labor Relations Board secret ballot election, the employees were prohibited by state court injunction from engaging in any electioneering or organizing activities "at, adjacent to, or near the plant". In short, they were prevented from exercising their rights guaranteed them under Section 7 of the National Labor Relations Act at the most critical area. In all likelihood, the geographic area from which the employees were barred was the only place at which organizing activities might be effectively carried out.

⁶² See *N. L. R. B. v. Sterling Furniture Co.*, 202 F. 2d 41, 45, (9th Cir. 1953) ("In borderline decisions the Union cannot know until the Board or this Court has spoken whether its closed or union shop agreements are valid or invalid, so it is required to proceed more or less in *terrorum* or, as an alternative, to forego freedom of action which in good faith it deems itself entitled to take."); *N. L. R. B. v. Teamsters, Local 745*, 228 F. 2d 702 (5th Cir., 1956).

To permit the lower court decision to stand would thereby enable a state court, under the guise of imposing a curb on so-called abusive and insulting speech, to throttle all speech and all other organizing and electioneering activity at the most critical time and place. State courts would be given a ready means to cut down to whatever proportions they, the state courts, deemed proper, the rights guaranteed under federal law to employees to join unions of their own choosing.

If allowed to stand, the decision of the court below would lead to an easy circumvention of the preemption doctrines so carefully formulated and pieced together by this court over these past several years. It would permit a state to take jurisdiction of labor relations matters and substitute its judgment for that of the National Labor Relations Board by the simple device of selecting a narrow phase of union activity and labeling it unlawful. It would reintroduce to the field of labor relations the "multiplicity of tribunals and a diversity of procedures" with their "incompatible or conflicting adjudications" which this Court through prior decision brought to an end. See *Garner*, *supra*, 346 U. S. at pp. 490-91. The exclusive jurisdiction entrusted to the National Labor Relations Board would soon exist in name only, as concurrent state court regulation and control became the rule.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should reverse the judgment of the court below.

Respectfully submitted,

WILLIAM J. ISAACSON,
15 Union Square,
New York 3, N. Y.

SIDNEY S. McMATH,
LELAND F. LEATHERMAN,
HENRY WOODS,

c/o McMath, Leatherman &
Woods,
417 National Old Line Bldg.,
Little Rock, Arkansas.

Counsel for Petitioners.

HERBERT SEMMEL,
Of Counsel.

APPENDIX

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE 6, SECTION 2:

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

AMENDMENT 14, SECTION 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

TAFT-HARTLEY ACT (29 USC § 151 *et seq.*)

SECTION 7. RIGHTS OF EMPLOYEES

"Employees shall have the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activi-

ties for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities, except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 158 (a) (3) of this title."

SECTION 8. UNFAIR LABOR PRACTICES

"(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 (§157 of this title);

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) (§159(a) of this title).

(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 (§157 of this title): Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; * * *

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

* * * *

(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act (§§141 to 197 of this title), if such expression contains no threat of reprisal or force or promise of benefit.

* * * *

SECTION 10. PREVENTION OF UNFAIR LABOR PRACTICES

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in Section 158 of this title) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation

except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

SECTION 13. RIGHT TO STRIKE PRESERVED

Nothing in this subchapter, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

James E. Youngdahl, W. Chandler,
Ruth Ralph, Amalgamated Clothing
Workers of America, CIO, Norma Cobb,
Hazel Kennedy, Pauline Midgett,
Lois Morrison, Mildred Tacker,
Florence Roberts and Pauline Waldrep _____ Petitioners

V. No. ~~260~~ //

Rainfair, Inc., _____ Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION

J. L. Shaver,
c/o Shaver & Shaver, Attorneys,
Ben Block Building,
Wynne, Arkansas.
Attorneys for Respondent.

August 7, 1956.

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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 269.

James E. Youngdahl, W. Chandler,
Ruth Ralph, Amalgamated Clothing
Workers of America, CIO, Norma Cobb,
Hazel Kennedy, Pauline Midgett,
Lois Morrison, Mildred Tacker,
Florence Roberts and Pauline Waldrep _____ Petitioners

V. No. 269.

Rainfair, Inc. _____ Respondent

Petition for Writ of Certiorari to the
Supreme Court of Arkansas.

Brief for the Respondent In Opposition

QUESTIONS PRESENTED

This court will not assume jurisdiction because:

(a) The Supreme Court of Arkansas found from the evidence that the picketing was entangled with violence and other illegal conduct, and the whole pattern of conduct along the picket line disclosed a clear design on the part of the petitioner to intimidate and coerce their former fellow workers by persistent abuse, insults, and conduct calculated to cause breaches of the peace and other unlawful results, and should be enjoined under the police power of the state. Petitioner raises no issue that the findings of the lower courts were without warrant so as to be a palpable invasion of their constitutional guarantees. Milk Wagon Drivers Union,

Etc., V. Meadowmoor Dairies, 312 U. S. 287, 61 S. Ct. 552 (Page 555).

(b) Rule 23. 1. (f) Supreme Court Rules, requires that the federal question of the exclusive jurisdiction of the National Labor Relations Board be raised in the Court of first instance in order that the lower Court may first have the opportunity of deciding said question. This question was not raised in the lower Court, and the petition does not specify the stage in the proceedings in the Court of first instance and in the appellate court, at which, and the manner in which, such federal question sought to be reviewed was raised. See pleadings of petitioners filed in the Chancery Court of Cross County, Arkansas, Appendix No. I, II & III. Also, opinion of the Supreme Court of Arkansas, Appendix No. 19, last paragraph, Petitioners' Brief.

(c) The National Labor Relation Board would not have had exclusive jurisdiction of this strike had the jurisdictional question have raised in the Court of first instance, because the methods used by petitioners in conducting the strike were illegal. The Federal Law does not give the National Labor Relations Board power to forbid a strike because the methods used are illegal. International Union, U. A. W., et al, V. Wisconsin Employment Relations Board, et al, 336 U. S. 245, 69 S. Ct. 516, (See Syllabus. No. 8.)

STATEMENT

The Supreme Court of Arkansas found from the undisputed evidence that the strike was conducted as follows:

The Plant Manager was followed by strikers every time he left the plant in his car. He was told by one of the pickets that she was going to wipe the sidewalks clean with him and send him back to Wisconsin. He received so many anonymous telephone calls at his home that he had to have his telephone disconnected at night.

Nails and roofing tacks were strewn over the plant's parking area and over the driveways of the home of the Plant Manager and twelve of the women employees.

Mrs. Jewell Newby, an employee of respondent, who lived in a trailer next to the lot leased by petitioners, observed two women strikers, who had previously threatened to move her trailer and whip her, puncture two tires of an automobile belonging to her daughter and who was visiting her at the time. These strikers were arrested and subsequently paid a substantial fine.

A window in respondent's plant was broken and a black snake about five feet long was found inside under the broken window. Both the tire puncturing and the broken window occurred early in the morning of June 20, 1955, the day the picketing was resumed, and thereafter two employees were told by a striker that "you

gals better check your sheets tonight, there might be a snake in them."

The vacant lot leased by Petitioners was separated from Respondent's plant by a street 20 feet wide. From 8 to 37 Union staff members, strikers and sympathizers would gather in and around a tent placed thereon at different times during the day. As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the edge of their lot and sometimes in the street, and engage in loud and offensive name yelling, singing or shouting directed at the workers. The workers were called, in addition to these names set forth in petitioners' statement, "dirty scabs," "crazy scabs," "cotton patch scabs," "Fuzzy headed scabs," "fools", "cotton picking fools," and other similar names. This took place every time an employee left or entered the plant and was done by the strikers individually, in couples, or by the entire group and in a loud and boisterous manner. It was described as "just bedlam" when more than a dozen joined in the shouting.

Particular remarks were reserved for individual workers. One pregnant worker was greeted with "Get the hot water ready," or "I am coming to make another payment on the baby, call Dr. Beaton," or, "Why you can work another hour until you go to the delivery

room." This worker and another were at a filling station when two strikers drove up and told the attendant not to wait on "these scabs."

The strikers made fun of one worker's clothing and asked if "Pete", the plant manager, still liked her "low-cut dresses and earrings." This employee became so mad at this that she invited the picket to come over and "make it some of her business." This worker had two boys to support and thought she was entitled to work without being molested and insulted.

The strikers also sang Union songs with lyrics improvised to the tune of popular ballads and religious songs. "When the Saints go marching in" became "When the Scabs go marching in", and "Davy Crockett" began, "Born in a cotton patch in Arkansas; the greenest gals we ever saw . . ." These songs were directed at the workers.

The women pickets would stand in the street or sit near the plant and shout ugly names, stick out their tongues, hold their noses, make a variety of indecent gestures while pointing at the workers in the plant. One striker spit at the workers through the plant window. The strikers would deliberately congregate in the street in front of the plant and make it difficult for the employees to have free ingress and egress to the

plant.

Several of the workers testified that this conduct of the strikers made them afraid, angry, sick and nervous, and had an adverse effect on their work. The Chief of Police testified that there was more tension during the second picketing than during the first, and he was fearful that there was going to be trouble. The Union staff members testified that the feelings were running high and one staff member called the police when trouble seemed imminent.

Respondent offers the above in addition to the statement of petitioners, which is almost identical with the findings of the Supreme Court of Arkansas. See opinion of that Court, petitioners' brief appendix, pages XI-XV.

None of the strikers were members of a labor union at any time during the picketing and none of them nor the staff members of the union made any demands upon the management for improved working conditions or pay. The only demand made upon management was that the union be recognized as representative of a majority of the plant's employees in said plant.

ARGUMENT

(a) The State of Arkansas has the right "to set the limits of permissible contest open to industrial com-

batants," and to exercise its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.

The picketing here was conducted in such a manner as to be enjoined under the traditional police powers of the state. The Chancery Court of Cross County, Arkansas, found in its decree of September 15, 1955, that:

"2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, ****." Petitioners' Brief, Appendix VI.

The Supreme Court of Arkansas in its opinion affirming the lower court detailed the background of violence and unlawful conduct committed by petitioners, and the pattern of persistent abuse, insults, and other conduct calculated to cause breaches of the peace, and then said:

"It is difficult to understand how any court could classify such conduct as 'Peaceful picketing.'"

Petitioners' Brief, Appendix XIX.

These findings of the lower court will be accepted by this court unless it is shown by petitioners that those findings were without warrant, so as to be a palpable invasion of constitutional guarantees. See *Milk Drivers Union of Chicago V. Meadowmoor Dairies*.

supra.

The undisputed evidence shows that the strikers' conduct, during both periods of picketing, was such as to be enjoined under the police powers of the state.

From *Thornhill V. State of Alabama*, 310 U. S. at pages 103-104, 60 S. Ct. at page 745, 84 L. Ed. 1093, where it was said that "the court was careful to point out that it was within the province of state to set the limits of permissible contests open to industrial combatant" down to the present time this court has consistently held that the state courts have such power, and in addition thereto have the historic powers over such traditional local matters as public safety and order, and the use of streets and highways, *Allen-Bradley Local V. Wisconsin Employment Relations Board*, 315 U. S. 740, 62 S. Ct. 820, 86 L. Ed. 1154, or if the picketing is conducted contrary to state law, the state has the power to control same. *Giboney V. Empire Storage & Ice Company*, 336 U. S. 490, 69 S. Ct. 684; *International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers Union V. Hanke*, 339 U. S. 470, 70 S. Ct. 773; *Hughes V. Superior Court of California*, 339 U. S. 460, 70 S. Ct. 718, 94 L. Ed. 985. See also, *Milk Wagon Drivers Union, ETC., V. Meadowmoor Dairies*, supra, where the court said: —

.. "But utterance in a context of violence can lose

its significance as an appeal to reason and become part of an instrument of force."

In *Garner V. Teamsters, Chauffeurs and Helpers, Etc.*, 346 U. S. 485, 74 S. Ct. 161, the court again recognized the right of the states to enjoin mass picketing, threatening of employees, obstructing streets and highways, or picketing homes, or enjoining activity which threatens a probable breach of the state's peace, or would call for extraordinary police measures by state or city authorities. (Page 164).

The public policy of the state of Arkansas is defined in the following cases:

Local Union 313 V. Stathakis, 135 Ark. 86,
Riggs V. Tucker Duck & Rubber Co., 196 Ark. 571,
Local Union No. 858 V. Jiannas, 211 Ark. 352.

In the case of *Smith V. F & C Engineering Company*, opinion delivered December 12, 1955, *The Law Reporter*, Vol. 100, No. 3, Page 88, the court said that it is well settled by the decision of the U. S. Supreme Court and our own cases that peaceable picketing is allowed under the constitutional guaranty of freedom of speech in order that a Union may acquaint the public with the fact and nature of a labor dispute and solicit public support in any lawful manner to prevail in the controversy, and that it is equally well settled that the law does not

countenance the use of threat, intimidation, force, coercion, violence, or other unlawful means, however laudable the motive or purpose of the strikers.

PETITIONERS' BRIEF

A. The injunction does not violate the constitutional right of peaceful picketing.

Petitioner argues that you must have the degree of violence that was in the Meadowmoor case before a state injunction will be justified. We have previously quoted cases setting out the legal theory upon which injunctions can be issued, and all the cases seem to hold that the courts will not countenance the use of threat, intimidation, force, coercion, violence, obstructing streets and highways, picketing homes or activity which threatens a probable breach of the state's peace, or which would call for extraordinary police protection. Petitioners claim that the acts of violence were isolated and episodic, but the Supreme Court of Arkansas said:

"Even if it be conceded that the acts of violence involved here fall in that category, there was nothing isolated nor infrequent about the persistent abuse, insults and epithets along the picket line. Many jurisdictions have authorized such injunctions where the strikers' acts and conduct have been so entangled with violence and other illegal conduct that future excesses might reasonably be anticipated in the light of what was previously done. See cases collected in 132 A. L. R. 1218."

Petitioners' Brief, Appendix XIX.

B. The injunction does not violate the constitutional right of freedom of speech.

The Supreme Court of Arkansas disposed of this matter with the following statement:

"A constitutional right to abuse, insult, slander, or intimidate others is simply non-existent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others."

Petitioners' Appendix No. XVII.

In support of this statement of law the court cited the following:

Chaplinsky V. State of New Hampshire, 315 U. S. 568, 62 S. Ct. 766, 86 L. Ed. 1031,

Cantwell V. Connecticut, 310 U. S. 296, 309, 310, 60 S. Ct. 900, 906, 84 L. Ed. 1213, 128 A. L. R. 1352.

In the Chaplinsky case the court said that resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the ~~Constitution~~ and its punishment as a criminal act would raise no question under that instrument.

The Arkansas Supreme Court, (Petitioners' Appendix XVIII,) quoting Arkansas Statutes Sec. 41-1412, had this to say:

"It has long been a violation of the criminal laws of this state for any person to . . . make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault" Ark. State. Sec. 41-1412

See the following Arkansas cases construing said Statute:

Moore V. State, 50 Ark. 25, Ruffin V. State, 207 Ark. 672, Branton V. State, 214 Ark. 861, Certiorari denied, 70 S. Ct. 155, 338 U. S. 878.

In the case of National Labor Relations Board V. Longview Furniture Company, 206 Fed. (2d) 274, the court said that the National Labor Relations Act does not protect employees who use insulting and profane language calculated and intended to publicly humiliate and degrade employees who are attempting to work, and from the standpoint of discharge or reinstatement of such employees there is no difference in principle between engaging in acts of violence and using profane and insulting language toward fellow employees in an effort to drive them from work.

Petitioners seek to justify the threats, insults, epithets, and coercion thrown at the workers by saying that the strikers were not products of finishing schools but were wives and daughters of Eastern Arkansas sharecroppers, with limited education and social background. There is no evidence in the record to support this statement. The workers came from the same county that the strikers came from, and all of them were people who sought employment at Rainfair, Inc., and were employed because of their qualifications. Petitioners

further state that the workers used the only weapons at their command — jeers and ridicule. These weapons were insults, slander, and violated the criminal laws of Arkansas.

The use of the word "scab" has many times been condemned by the courts of this country. *Prince V. Socialistic Cooperative Publ Assn'* 64 N. Y. S. 285, U. S. V. *Taliaferro*, 290 Fed. Rpr. 214, *Taliaferro V. U. S.* 290 Fed. Repr. 906, *State V. Johnson*, 18 P (2d) 35, 78 Corpus Juris Sec. page 586.

In the case of *Caterpillar Tractor Company V. NLRB*, U. S. Court of Appeals, Seventh Circuit, 230 Fed. (2d) 357, the court said that although Union organizational activity is protected by the National Labor Relations Act, that wearing "Don't Be A Scab" buttons is disruptive and goes beyond the area of protective activity.

C. The injunction does not violate the petitioners' freedom of assembly.

There has been no evasion of petitioners' freedom to assemble. The Union rented the lot directly across Rowena Street, which is 20 feet wide, for 30 days, and placed a telephone, tables, chairs, a stove and benches under a tent on said property. The purpose of renting the lot was to use it for mass picketing and insults thrown at the workers. It was here that the strikers

congregated, mass picketed, and insulted the workers. They used this lot as a spring board for their unlawful activities, and they were enjoined from loitering and congregating around and under the tent, because they were threatening, intimidating and coercing the officers, agents and employees of respondent.

D. The National Labor Relations Board did not have sole and exclusive jurisdiction of this dispute.

Petitioners finally contend that the National Labor Relations Board has exclusive jurisdiction in this matter. This point was first raised on appeal in the Supreme Court of Arkansas. No allegation of exclusive National Labor Relations Board's jurisdiction was made in any of the pleadings filed by Petitioners in the lower court. See Appendix No. I, II & III. The Supreme Court of Arkansas found that this "question of jurisdiction was not raised below." (Petitioners' Appendix XIX.) Petitioners not having raised this question in the lower Court are denied the right by Supreme Court Rule 23 1 (f) to now raise same.

However, in order to fully meet Petitioners' argument respondent states that this matter is controlled by the recent case of *United Automobile A & A. v. W. V. Wisconsin Emp. Rel. Bd.*, decided June 4, 1956. See Supreme Court Reporter June 15, 1956, Vol. 76, No. 15.

page 794, where the court said, the fact that a Union commits a federal unfair labor practice while engaging in violent conduct does not prevent state from taking steps to stop the violence. The court further said that it seems obvious that Sec. 8 (b) (1) was not to be the exclusive method of controlling violence even against employees. The state interest in law and order precludes such interpretation. The states are the natural guardians of the public against violence, for it is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. The court then said they would not interpret an Act of Congress to leave the states' powerless to avert such emergencies without compelling directions to that effect. See also, *Amalgamated Clothing Workers of America, et, al, V. The Richman Brothers* 343 U. S. 511, 75 S. Ct. Reporter, 452.

The Webber and Garner cases relied upon by petitioners involved wholly peaceful picketing, and the court was careful to point out in the Garner case that the activities therein enjoined did not threaten a probable breach of the state's peace.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

J. L. Shaver,

c/o Shaver & Shaver, Attorneys,

Ben Block Building,

Wynne, Arkansas.

Attorney for Respondent.

APPENDIX

IN THE CHANCERY COURT OF CROSS COUNTY, ARKANSAS

Rainfair, Inc. _____ Plaintiff

Vs. No. 3262-A.

James E. Youngdahl, et al _____ Defendants

MOTION TO VACATE TEMPORARY INJUNCTION

Comes the defendants by their attorneys and moves that the Temporary Injunction granted herein on June 25, 1955, be vacated on the authority of Local No. 802 V. Asimos, 216 Ark. 694, 227 S. W. (2d) 154, for the following reasons:

(1) The Injunction as previously written violates the right of free speech, as guaranteed by the 14th Amendment to the Constitution of the United States.

(1) No act of violence or breach of the peace has occurred, which has grown out of the picketing.

(3) The defendants herein have not engaged in mass picketing.

(4) The picketing herein was not for an illegal

purpose, but was for the purpose of securing recognition of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., which is a legal objective under both State and Federal Law.

Respectfully submitted,
McMATH, LEATHERMAN & WOODS,
Attorneys,

By: _____

Filed

6-30-55

J. W. McElroy, Jr.,
Clerk and Ex-Officio Recorder,
Cross County, Ark.

By: Evangeline R. Davis, D. C.

IN THE CHANCERY COURT OF CROSS COUNTY, ARKANSAS

Rainfair, Inc. _____ Plaintiff

Vs. No. 3262-A.

James E. Youngdahl, Et Al _____ Defendants

AMENDMENT TO MOTION TO VACATE TEMPORARY INJUNCTION

Comes the defendants by their attorneys with an Amendment to Motion to Vacate Temporary Injunction by clarifying Section (4) of said Motion to read as follows:

(4) The picketing herein was not for an illegal purpose, but originally was for the purpose of securing recognition of the Amalgamated Clothing Workers of America, CIO, by the Rainfair, Inc., and redress for unfair labor practices; and the picketing, in the second instance, was for the purpose securing redress for continuing unfair labor practices, which are legal objec-

tives under both Staté and Federal Law.

Respectfully submitted,

McMATH, LEATHERMAN & WOODS,

Attorneys.

By: Henry Woods.

Filed

July 1, 1955

J. W. McElroy, Jr.,

Clerk and Ex-Officio Recorder,

Cross County, Ark.

By: Evangeline R. Davis, D. C.

v

Filed: July 27, 1955.
J. W. McElroy, Jr.,
Clerk and ExOfficio Recorder
Cross County, Ark.

**IN THE CHANCERY COURT
OF CROSS COUNTY, ARKANSAS**

Rainfair, Inc.,

Plaintiff

Vs.

No. 3262-A.

James E. Youndahl, Et Al,

Defendants

A N S W E R

Come now the defendants and file their answer here-
in as follows:

I.

Defendants admit that they are officers, directors, members or applicants for membership in the Amalgamated Clothing Workers of America, CIO.

II.

Defendants further admit that they established a peaceful picket line around plaintiff's place of business at Wynne, Arkansas, from June 20, 1955, until the time that injunction was issued herein.

III.

Defendants deny each and every other material al-

legation contained in plaintiff's complaint and in particular deny:

(a) That the placards and signs carried by defendants were unfair and misleading.

(b) That defendants engaged in mass congregating and loitering or mass picketing.

(c) That defendants were connected, in any way, with the smashing of the window and the placing of a live snake in plaintiff's plant.

(d) That defendants have followed automobiles of plaintiff's employees, gesturing, yelling and shouting offensive names, personal ridicule and epithets at them.

(e) That defendants used epithets, insults, abusive names and abusive language other than calling plaintiff "Scabs", which word, defendants believe is a proper English word found in recognized dictionaries.

(f) That defendants have congregated in front of driveway and in the streets in front of plaintiff's plant so as to make it difficult for plaintiff's employees to have free ingress and egress into said plant.

(g) That they have annoyed plaintiff's officers and employees by telephone calls.

(h) That they have unlawfully assembled at or

near plaintiff's plant.

(i) That they have engaged in any breach of the peace or other disorders.

(j) That the said defendants were engaged in a strike for an unlawful or illegal purpose.

(k) All other matters set forth in said complaint unless specifically admitted herein.

IV.

Defendants deny that plaintiff has suffered any irreparable injury or damage.

WHEREFORE, defendants pray that the temporary injunction issued herein be dissolved. That costs herein be taxed against plaintiff and that plaintiff take nothing by reason of his complaint herein.

Respectfully submitted,

McMath, Leatherman & Woods, Attorneys,

By: Henry Woods.

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JOHN T. FEY, Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 11

James E. Youngdahl, W. Chandler, Ruth Ralph,
Amalgamated Clothing Workers of America,
CIO, et al., Petitioners,

vs.

Rainfair, Inc.

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARKANSAS

BRIEF FOR RESPONDENTS

J. L. Shaver,
Ben Block Building,
Wynne, Arkansas,

c/o Shaver & Shaver, Attorneys,
Ben Block Building,
Wynne, Arkansas.

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It is believed that the citation of
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should be 32 A. L. R. (2d) 1037.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 11

James E. Youngdahl, W. Chandler, Ruth Ralph,
Amalgamated Clothing Workers of America,
CIO, et al., Petitioners,

vs.

Rainfair, Inc.

BRIEF FOR RESPONDENTS

Questions Presented

1. Whether a state court may, consistently with the free speech guarantee of the Fourteenth Amendment, prohibit strikers from picketing, which picketing was carried on with intimidation, threats, violence, and other unlawful means.

2. Whether a state court may, consistently with the Fourteenth Amendment, prohibit strikers from picketing, loitering and congregating on leased property across from the struck plant, because the picketing was set in a pattern of violence and conducted in a manner that was unlawful.

3. Whether a state court may, consistently with the Fourteenth Amendment, prohibit all picketing because the picketing is conducted in violation of a State Criminal Statute.

4. Whether the conduct of the strikers on the picket line, including the speech hurled by them at the employees as they went to and from their work, amounted to lewd, obscene, profane, libelous and insulting or "fighting words", which words by their utterance tended to incite an immediate breach of peace, which was not protected by the Fourteenth Amendment.

5. Whether or not the evidence is sufficient to support the findings of fact of the lower court and the State Supreme Court, that the strikers in picketing Rainfair's plant resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of peace, and other unlawful results.

6. Whether a state court may prohibit the unlawful conduct of the strikers, in view of the provisions of Taft-Hartley.

Constitutional and Statutory Provisions Involved

The Constitutional provision involved, in addition to the ones cited in Petitioners' Brief, is Amendment No. 34 to the Arkansas Constitution. See Appendix, P. 50.

The relevant Arkansas Statutes are Sec. 41-1412 and Sec. 81-201-202. See Appendix, P. 50.

STATEMENT OF CASE

Rainfair, Inc., is engaged in the manufacture of men's slacks in its plant at Wynne, Arkansas, where it employed approximately 100 women and seven men in April 1955. It ships these slacks in interstate commerce. None of the employees were members of a labor union at that time, but some of them had signed membership application cards with Petitioners.

On Monday, May 2, 1955, twenty-nine employees failed to return to work, and a picket line was established by the Union. (R 119).

Rainfair Plant Manager notified said employees by registered mail that it would be assumed that they were quitting their jobs, if they did not return to work in three or four days. (R 121). Three employees returned to work (119) and the picketing was continued until May 19, 1955, when the pickets were withdrawn and the strikers applied for reinstatement. (127). In the meantime, Rainfair had hired thirteen new employees, and immediate reinstatement of the strikers was declined. (R 121).

On June 17, 1955, the strikers met with several staff members of the Union at Forrest City, Arkansas, and

voted to re-establish the picket line, because Rainfair had refused to reinstate the strikers; (R 46-47). or for continuing unfair labor practices. (R 45).

In the meantime Petitioner filed charges with the Labor Board, alleging violation of 8 (a) (1), 8 (a) (3), 8 (a) (5) of the National Labor Relations Act. The Union was not willing at that time to go into an election to determine whether or not they had a majority status (R 45-46).

On October 19, 1955, an election of the workers was held and the Union lost the election.

During the first picket line (May 2 to May 19, 1955) a pattern of unlawful conduct was established. One of the pickets told the plant manager she was going to wipe the sidewalks clean with him, and send him back to Wisconsin because he was nothing but trash. (R 128). On one occasion nails were strewn throughout Rainfair's parking lot, and about a week later roofing tacks were strewn on the Manager's driveway at home and in the driveways at the homes of twelve girls who did not go on strike (R 128-129). The roofing tacks were introduced into evidence. (R 155).

The picketing was resumed about 6 o'clock on June 20, 1955. At 12:30 A. M., on June 20, Hazel Kennedy and Florence Roberts, two of the strikers, who had been molesting Jewell Newby, and threatening to move her trailer, in which she lived, which was located opposite the Rain-

fair Building on the east side of Rowena Street, and who had also threatened to whip her, stopped a Ford Pick-up truck they were in (R 92), and Florence Roberts got out of the truck and took an ice pick and punctured the front and back tires on Mrs. Newby's daughter's car which was parked in front of the trailer (R 93-94). They were arrested and convicted on criminal charges in the Justice of the Peace Court. (R 94 - 106).

At 5:15 the same morning Elmer Brown, City Policeman, was called to the Plant by Charles Gossett, and he found a window broken, glass laying in the floor and a black snake about five feet long, lying coiled up by the wall. The snake was lying right under the window (R 106).

When the picketing was resumed on June 20, 1955, the Union rented a vacant lot for a month, directly across and on east side of Rowena Street from the main entrance to Rainfair's building. (R 86). This street runs north and south, and is about 20 feet wide. Rainfair's building is on west side of street and faces east. There is a parking lot on the east side of the building between the building and the west side of Rowena Street. Most of the employees drive or ride with other employees to and from work, and enter the building through the door on the east side of the building. These employees park their cars, headed toward the east wall of the building (R 109).

The Union placed a tent on the lot in which they in-

stalled a telephone, tables, three benches, chairs, and the lot was used as headquarters for the strikers. (R 86).

The picketing was resumed and usually one or two pickets would walk and carry signs up and down Rowena Street. Other Union Staff members, strikers, and their sympathizers would assemble under and around the tent in groups estimated at different times from eight to thirty-seven. (R 28 - 128). It was the focal point of all this picketing and the headquarters for the concerted action of either name calling, singing, or jeering. (R 111). As the employees would go to and from work at the plant, or go to lunch, or take a recess, the strikers would congregate along the west edge of their lot and sometimes in Rowena Street, and engage in loud and offensive name calling, singing or shouting directed at the workers. They were called "slaves," "cotton picking fools", scabs of all kinds such as "dirty scabs," "pony-tailed scabs," "fat scabs" "crazy scabs." They would make remarks about raising rocks in the yard and finding frogs and disagreeable looking animals that were much finer than the appearance of the workers. (128). This took place every time an employee left or entered the plant. It was done by the strikers individually, in couples, by the entire group, and in dozens, in a loud and boisterous manner. When it got to be more than that it became bedlam. (R 128). Individual workers were singled out for their special type of abuse, insults, and coercion, for example:

1. Every time Pete Bonady, Plant Manager, went to and from the plant it was like lighting a firecracker, and you could hear the noise for blocks. Invariably, when he left the plant somebody would follow behind in an automobile. If he went to the Post Office, bank, or home for lunch, he was followed. (R 113). They came by his house at night. Sometimes they would come by his home at 1:30 A. M. hollering, "Peter Rabbit", and tooting horns. (R 114). On June 20, and 21, he had to disconnect the telephone at home because he began, at 9:00 o'clock, getting anonymous phone calls and they would say nothing. On June 20, this continued until 12:40 A. M. He had to disconnect the phone and have it connected at 6 the next morning, and he continued to do this until the injunction was filed, and he hasn't been bothered since. (R 114).

2. Dollie Jones, who had been working there 20 months, was called a scab almost every day as she went to and from work by a group that was assembled in front of the tent (R 132). Lois Morrison and Florence Roberts, two of the strikers, drove by Charlie Boone's house, where Dollie Jones and Nadine Johnson were visiting on the lawn after work hours, and slowed their car down and Lois stuck her head out of the window and hollered,

"You girls better check your sheets tonight. There might be a snake in them." (R 133).

This occurred after everybody was talking about a snake having been found in the plant. (R 135).

3. Rubie Reynolds, who had been working there over a year, was pregnant. She had this to say about what they hollered at her: —

“Well, the first time they was picketing it they didn't have anything to say to me. I mean, you know, they didn't say anything, but the last time why they hollered, ‘Get the hot water ready,’ and ‘I am coming to make another payment on the baby, call Dr. Beaton,’ and here last week I went to the doctor and one day they said, ‘Why you can work another hour until you go in the delivery room at least.’ They said, ‘There is no need in going up there right now,’ and when I came back they asked me did I go on a false alarm. Just mostly my condition is what they —” (R 136).

Dollie Jones drove up to a filling station down town to get gas, and Lois Morrison and Florence Roberts drove up about the same time, and the attendant asked who got there first, and they said:

“Why we were here first, you don't want to wait on these scabs before you do us. They are scabs.” (R 137).

4. Corlis Jones, who had been working at the plant since the day it was opened, was called “yellow scabs”, “fat scabs,” “cotton patch scabs”, and “just all kinds of scabs.” She said they would all move forward from where they were, and then they would just call names, and sometimes they would just call you a scab as the rest of them, and sometimes they would call and say,

“Corlis is a big yellow scab, a big this, that and just making remarks, you know, about being a slave, and it didn't bother me so much until they called

my name personally, and then when they called my name personally, of course, I just didn't like it. It would make me more nervous." (R 139).

5. Lorene Jones, who had been working at the plant since September, was called; "A fuzzy-headed scab", "a slave", "a damned fool," and "a filthy face." She worked on South side of building and the windows were open on Martin Street. The pickets would come over there and sit down, point at her, and call her ugly names, and Lois Morrison spit at her three times through the window. (R 141).

6. Ella Jane Clark, who had been working at the plant eight months, was called "A scab," "Pony Tailed Scab," and "A fool." It was done in groups and also just people, two or three at the time. (R 143).

7. They had this to say to Annie Brown, who had worked at the plant 16 months, and was the wife of Elmer Brown, the City Policeman. They would sing that they would roll it over her, and holler and ask where was the Policeman. One afternoon he came up there after her and Lois Morrison told him he was a scab because he was married to a scab. (R 145). While she was working she could observe the pickets on Martin Drive, and she said this;

"Well, they put up their hands like this (indicating), and made signs, and stick their tongues out and sit and

hold their nose and blow it out, and just holler and yell and point to the window." (R 145).

8. Geraldine Baker, who had worked at the plant five months, was called a "fat scab" by the group, and Lois Morrison hollered this at her;

"Oh, look there at that low-cut dress, and big ear-ring girl," and, "Does Pete still like low-cut dresses and earrings?" (R 147).

9. Dorothy Davis, who had worked at the plant 17½ months, was called a dumb scab, cotton picking scab, and just all kinds of scabs. This was done by a mass assembled in the road and around the tent and by individuals. They sang songs to her like this;

"Born in a cotton field in Arkansas, the greenest gals we ever saw, working for Rainfair for seventy-five cents."

They also sang,

"When the scabs go marching in," using the tune, "When the Saints go marching in," as we all start in the building.

"When the scabs go marching in, oh, how I would hate to be in that number when the scabs go marching in." (R 149).

Jack Cobb, Chief of Police, was called down to Rainfair when the picket line was thrown up. Mr. Chandler, Union representative, filed a complaint with him Thursday. On another occasion Mr. Chandler requested that he be down there, each morning, at noon, and in the afternoon, and at each rest period. On another occasion, Mr.

Chandler called him to come down there at once. He said there were two of the workers that had walked to the end of the walk with pop bottles in their hands. He was there many times during both picket lines and in answer to how they acted the last time he said:

"Well, I just — each side. I just felt there was going to be trouble. I told Mr. Chandler I felt so. I told Mr. Brown I thought so. There was a different attitude the last time than there was the first time."
(R 152).

Charles E. Ford, who was agent for an insurance company, had business at the plant, and had occasion to observe the conduct of the strikers. He became so concerned as a citizen, that he went to the police and expressed his opinion that he was afraid if the thing continues there is going to be violence." (R 82).

Pete Bonady stated that the girls were extremely nervous. They were frightened that some bodily injury could take place, plus the fact that they were under a constant barrage of name calling and they were extremely nervous. (R 115). Mr. Bonady was very concerned about something happening to his family (R 123). He stated that in his opinion, it wouldn't have taken much to have touched something off, and there would have been physical violence there. The girls were extremely nervous. They were afraid they were going to be molested going and coming from work, whether something would happen at

home. (R 129).

On June 24, 1955 Rainfair procured a temporary injunction, enjoining the picketing and the above conduct. (R 5). This injunction was made permanent on September 15, 1955 (R 13). Lower court affirmed by Arkansas Supreme Court on March 19, 1956. (Tr. 196).

On June 28, 1955 Jack Cobb, Chief of Police, was called down to the plant by Mr. Bonady and shown a big area of broken milk bottles, fruit jars, and coca cola bottles. Some of this broken glass was in the street, but most of it was up where Mr. Bonady parks his car. (R 156-57). The glass was introduced into evidence. (R 157). The court instructed Mr. Cobb to try to find out who broke the glass and distributed it along the highway (R 157). Mr. Cobb got information that two boys, Thomas Cobb, and Jerry Hamrick, were the ones that did it.

On July 20, the court on its own motion issued an order to defendants, and specifically, to Thomas Cobb, Mildred Tacker, Lee Hamrick and Jerry Hamrick, to appear in Chancery Court on July 27, 1955, and to show cause why they should not be adjudged in contempt for violating the temporary injunction. (R 10-11).

A hearing was had on this motion on July 27, 1955, and the testimony of Jack Cobb, (R 155-163), Mildred Tacker (R 163-176), Jerry Hamrick, (R 176-183), and Lee Hamrick (183-19), was taken. On September 15, 1955 the

citation for contempt was dismissed (R 15).

It developed at this hearing that Thomas Cobb and Jerry Hamrick, two boys, broke the bottles and strew the glass. Thomas Cobb told the Chief the reason he did it was because "Pete did not treat his sister right." "Well, he wouldn't give her job back to her down at the plant." (R 158-160).

Thomas Cobb gave as his reasons for doing it, "I gave him one because they were mistreating my sister, and another was, because I was mad at Mrs. Newby. I didn't want to have nothing to do with Mrs. Newby. I knew she was trouble." (R 169). Mildred Tacker, one of the strikers, was a sister to Thomas Cobb. (R 163).

Jerry Hamrick is a son to Lee Hamrick, and he stated that the bottles were in front of Mrs. Newby's trailer. (R 178). That his daddy was one of the strikers but he did not participate in the second strike. (R 180). He said he was not mad at the employees and did not want to damage their car tires. (181). He gave no reason to the Chief why he broke the glass. (158).

Lee Hamrick, one of the strikers, had the Union headquarters at his home on Rowena Street during the first picketing. (R 183). He was not re-employed. When the second picket line was established he did not participate. Mrs. Newby's trailer was located in his yard. He made her move this trailer. (184). He had no contact with the Union

the second time: he "kind of pulled out of it." (R 187). He would not permit them to come back in his yard. He said he got out of the Union because some of them tried to get him to do violence and destroy property: "I said they did try to get me to, and I wouldn't do it." He refused to identify these persons. (R 189). He stated that it was not any one that was involved in the strike. He then said that it was not anyone that asked him to destroy none of the property.

"Q. What did they ask you to do?

A. They wanted me to put snakes, and stuff like that, in there. They asked me to but I wouldn't." (R 190).

He said that the person that wanted him to put the snake in there lived at Augusta, now, and that he could not think of that man's name. (R 190).

After the injunction was issued there was no further trouble, other than the bottle breaking done by Thomas Cobb and Jerry Hamrick.

On July 24, 1955, Rainfair filed a class action asking for an injunction against the Union and seven former employees of Rainfair on account of the unlawful acts set out above. A temporary injunction was issued on June 24, 1955, and made permanent on September 15, 1955. (R 5 and 13) In its decree making the injunction permanent the court among other things found: —

"2. That the defendants, in picketing the plaintiff's plant, have resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, and that the defendants have unlawfully abused the right to peaceably picket, as granted to them by the laws of this state and the Federal Constitution, and that said defendants should be permanently enjoined from picketing the plaintiff's plant." (R 13).

On March 19, 1956, the Supreme Court of Arkansas affirmed the lower Court. (R 196-203). *Youngdahl V. Rainfair, Inc.*, 226 Ark. 80.

The Supreme Court among other things found: —

"According to the undisputed evidence here, the whole pattern of conduct along the picket line discloses a clear design on the part of the appellants to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause breaches of the peace and other unlawful results. It is difficult to understand how any court could classify such conduct as 'peaceful picketing'." (R 202).

The court further said: —

"It has long been a violation of the criminal laws of this state for any person to ' . . . make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault . . .'" Ark. Stats. Sec. 41-1412." (R 201).

And, "A constitutional right to abuse, insult, slan-

der or intimidate others is simply nonexistent in this country. Freedom of speech does not mean freedom of vituperation nor does it mean freedom of a person to insult, revile or intimidate others." (R 201).

SUMMARY OF ARGUMENT

It is Respondent's contention that the picketing and related activities begun by the Union about 12:30 A. M., on June 20, 1955, and continuing until June 24, 1955, was carried on with violence, intimidation, threats, coercion and other unlawful conduct, which was intended to cause a breach of peace, and this conduct was not protected activity. This is the only question.

We venture the assertion that this is the first case before this court where intimidation was also carried on by throwing a snake in the plant. It will be argued that there is no evidence connecting the snake incident with the Union. However, we call the court's attention to the testimony of Dollie Jones (R 133) and Lee Hamrick. (R 190).

The Arkansas Supreme Court followed the case of Lilly Dache, Inc., V. Rose, 28 N. Y. S. (2d) 303, in defining what is "peaceable picketing." See 226 Ark. 86. The conduct of the strikers was not peaceable as so defined, but unlawful.

It is argued that the conduct of the strikers was not unlawful. Two Arkansas Courts have held otherwise, and their findings will not be reversed unless they are so without warrant as to be a palpable invasion of the constitutional guarantee here invoked. We have meticulously detailed the facts, in our statement of the case, so that the

court may, "at the beginning, get the full impact of the strikers' conduct.

We think no useful purpose could be served by again detailing the facts shown by the record, in order to sustain our contention that the evidence is sufficient, to sustain the findings of the two Arkansas Courts:

“ ARGUMENT

A. Violence, Coercion and Intimidation by Union Against Rainfair, and Its Employees, and Other Conduct as was calculated to cause breaches of the peace is not protected by the Fourteenth Amendment.

There are certain fundamental principles of law involving freedom of speech that have been well settled by the Court.

In Thornhill V. Alabama, 60 S Ct. 736, 310 U. S. 88, the Court said: —

“It is imperative that, when the effective exercise of these rights is claimed to be abridged, the court should ‘weigh the circumstances’ and ‘appraise the substantiality of the reasons advanced’ in support of the challenged regulations.” 60 S Ct. 741.

A group in power may not impose penal sanctions on peaceful and truthful discussions of matters of public interest merely on a showing that others may thereby be persuaded to take action inconsistent with its interest and the safeguarding of peaceful and truthful discussions is essential to the securing of an informed and educated public opinion with respect to a matter which is of public concern, and every expression of opinion on matters that are important has a potentiality of inducing action in the interest of one rather than another group in society.

"It is true that the rights of employers and employees to conduct their economic affairs and to compete with others for a share in the products of industry are subject to modification or qualification in the interests of the society in which they exist. This is but an instance of the power of the State to set the limits of permissible contest open to industrial combatants." 60 S Ct. 745.

The court further said: —

"The power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of the residents cannot be doubted." S Ct. 60, 745.

In Milk Wagon Drivers Union of Chicago V. Meadowmoor Dairies, 61 S. Ct. 552, 312 U. S. 287; the court said at page 555 of 61 S Ct.: —

"It must never be forgotten, however, that the Bill of Rights was the child of the Enlightenment. Back of the guarantee of free speech lay faith in the power of an appeal to reason by all the peaceful means for gaining access to the mind. It was in order to avert force and explosions due to restrictions upon rational modes of communication that the guarantee of free speech was given a generous scope. But utterance in a context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution."

The Court further said that "acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence*****." "Nor can we say that it was written into the 14th Amendment that a state through its courts cannot base protection against future

coercion on the inference of the continuing threat of past misconduct."

In *International Labor Relations Board V. Virginia Electric Power Company*, 62 S.Ct. 344, 314 U.S. 469, the court said,

"But certainly conduct, though evidenced in part by speech, may amount in connection with other circumstances to coercion within the meaning of the Act. If the total activities of an employer restrain or coerce his employees in their free choice, then those employees are entitled to the protection of the Act. And in determining whether a course of conduct amounts to restraint or coercion, pressure exerted vocally by the employer may no more be disregarded than pressure exerted in other ways." 62 S Ct. 348.

In *Allen - Bradley Local V. Wisconsin Employment Relations Board*, 62 S Ct. 820, 315 U. S. 740, the court said:

"We agree with the statement of the United States as amicus curiae that the federal Act was not designed to preclude a State from enacting legislation limited to the prohibition or regulation of this type of employee or union activity. The Committee Reports on the federal Act plainly indicate that it is not 'a mere police court measure' and that authority of the several States may be exerted to control such conduct. Furthermore, this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested.'" 62 S Ct. 825.

The court further said that Congress had not made such employee and Union conduct as is involved in the above case subject to regulation by the Federal Board.

In *Thomas V. Collins*, 65 S Ct. 315, 325 U. S. 516, the court said: —

"When to this persuasion other things are added which bring about coercion, or give it that character, the limit of the right has been passed. Cf. *National Labor Relations Board V. Virginia Electric & Power Co.* supra. But short of that limit the employers' freedom cannot be impaired. The Constitution protects no less the employees' converse right. Of course espousal of the cause of labor is entitled to no higher constitutional protection than the espousal of any other lawful cause. It is entitled to the same protection." 65 S Ct. 326.

In *International Union V. Wisconsin Employment Relations Board*, 69 S Ct. 516, 336 U. S. 245, the court said: —

"While the Federal Board is empowered to forbid a strike, when and because its purpose is one that the Federal Act made illegal, it has been given no power to forbid one because its method is illegal — even if the illegality were to consist of actual or threatened violence to persons or destruction of property. Policing of such conduct is left wholly to the states. In this case there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods." 69 S Ct. 521.

In *Gibbony V. Empire Storage & Ice Company*, 69 S Ct. 684, 336 U. S. 490, the court said: —

"It rarely has been suggested that the constitutional freedom for speech and press extends its immunity to speech or writing used as an integral part of conduct in violation of a valid criminal statute. We reject the contention now." 69 S Ct. 688.

The court further said that neither *Thornhill V. Alabama*, supra, nor *Carlson V. California*, 340 U. S. 106, 69 S. Ct. 746, supports the contention that conduct otherwise unlawful is always immune from state legislation because an integral part of that conduct is carried on by display of placards by peaceful picketers. The court then stated that it was careful to point out in the *Thornhill* opinion that it was within the province of states "to set the limit of permissible contests open to industrial combatants."

In *Hughes V. California*, 70 S Ct. 718, 339 U. S. 460, the court said that while picketing is a mode of communication it is inseparably more and different.

"Industrial picketing is more than free speech, since it involves patrol of a particular locality and since the very presence of a picketing line may induce action of one kind or another quite irrespective of the nature of the ideas which are being disseminated."*****

"But the very purpose of a picket line is to exert influences, different from other modes of communication. The loyalties and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word." 70 S Ct. 721.

In *International Brotherhood of Teamsters V. Hanke*, 70 S Ct. 773, 339 U. S. 470, the court said that it must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. The court recognized that picketing is "indeed a hybrid." 70 S Ct. 775.

In Building Service Employees International Union V. Gazzam, 70 S.Ct. 784, 339 U. S. 532, this court said that it has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity. 70 S. Ct. 787.

In Garner V. Teamsters, 74 S. Ct. 161, 346 U. S. 486, the court at page 164, 74 S. Ct. again reiterated the principles of law that a state still may exercise,

"its historic powers over such traditionally local matters as public safety and order and the use of streets and highways".

"Allen-Bradley Local No. 1111, United Electrical Radio and Machine Workers of America V. Wisconsin Employment Relations Board, 315 U. S. 740, 749, 62 S. Ct. 820, 825, 86 L. Ed. 1154."

See *United Const. Workers V. Laburnum Const. Corp.*, 74 S. Ct. 833, 347 U. S. 656. (See page 838 S. Ct. 74).

B. The Arkansas Law and Its Public Policy.

It has long been the law that laborers have the right to organize into unions for the purpose of bargaining collectively for the betterment of their condition, and as an incident thereto to strike collectively.

On the other hand, labor unions have no right to resort to force, intimidation or coercion; publicity as well as other means of persuasion may be used, but force, intimi-

dation and coercion may not be used. See Local Union No. 313 V. Stathakis, 135 Ark. 86, Riggs V. Tucker Duck & Rubber Co. 196 Ark. 571, Local Union No. 858, Hotel & Restaurant Employees Int'l. Alliance V. Jianna, 211 Ark. 353, Smith V. F & C Engineering Co. 225 Ark. 688.

The facts in the above four cases are very similar to the facts in this case. In Local Union No. 313 V. Stathakis, supra, the Arkansas Court affirmed the lower court in enjoining the picketing, and went into a thorough investigation of the law on this subject. To sum up what the court said we quote: —

“There must be taken into account the number of picketers, the extent of their occupation of the sidewalk, or street adjacent to the building or place picketed, and as well what they say and do and how they act. If the purpose of picketing is to interfere with those going into or coming out of the building, or place picketed, an injunction may be granted. On the other hand, if the design of the picketing is merely to give notice to the public that the proprietor of the place picketed is unfair to union labor, or to see who can be made the subject of persuasive argument, such picketing is legal and ought not to be enjoined.” (135 Ark. 98).

In Riggs V. Tucker, Duck & Rubber Company, supra, the facts show that during the day, and as numbers of the mob increased such epithets as “scab”, “yellow belly”, “snake in the grass”, and names more opprobrious, violent and vulgar were uttered by members of the Union, and that this continued throughout the day, being more violent

at times than others. No personal violence to those unloading the lumber was attempted while the work was going on, but threats of what would happen later were heard. The Supreme Court affirmed the action of the lower court in granting the injunction. It was argued that the Stathakis case had become obsolete and had become an anachronism. However, the court said at page 580: —

"We do not agree that the Stathakis Case is now obsolete and has become an anachronism. It is based upon the simplest and most elementary principles of right and justice. Nor do we agree that it has been repudiated by other courts. The brief of counsel for appellee cites many cases in which it has been approved."

In Local Union No. 858, etc., V. Jiannas, supra, at 211 Ark 357, the court said: —

"We reaffirm and reiterate our holding that the right to strike is one of which the employee may not be deprived, and he may solicit support by any lawful means he chooses to employ, but in the recent case of *Smith and Brown V. State*, 207 Ark. 104, 179 S. W. 2d 185, we said: . . . but even picketing when accompanied by force, violence, intimidation or coercion cannot find any protection under the constitutional guaranties of freedom of speech and freedom of the press."

In *Smith V. F & C Engineering Co., supra*, the lower court's findings that the threats and acts of intimidation, violence and property damage reflected by the proof was not isolated and disassociated incidents, but were enmeshed in, and inseparably connected with, the picketing, and

that the picketing should be enjoined. The court further said: —

“Perhaps the rationale of the result reached in the Meadowmoor Dairies and Jiannas cases, *supra*, is best stated by the annotator in 132 A. L. R. 1221 as follows: —

“The reason most frequently advanced by the courts in justification of the blanket injunction against all picketing, where there has been past violence or other unlawful conduct, is that an injunction of such breadth is necessary to prevent future excesses and coercion, which, in the light of the past conduct, may reasonably be anticipated.”

The public policy of the state with reference to freedom to work, affiliation with a labor union, or refusal to join or affiliate with a labor union, is set forth in Amendment No. 34 to the Arkansas Constitution, which was adopted in 1944 and reads as follows: —

“No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.” 1 Ark. Stat. (1947) 233.

And by Arkansas Stats. 1947, Sec. 81-201, et seq., Sec. 1. of said statutes states:

“Sec. 1. 81-201. Public policy — Freedom to bar-

gain. — Freedom of organized labor to bargain collectively, and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment No. 34 to the Constitution. (Acts 1947, No. 101, par. 1, p. 211.)

C. The unlawful conduct of the Union violated Arkansas Statute (1947) Sec. 41-1412 known as "The Tranquility Statute."

It is a violation of the criminal laws of the State of Arkansas,

"If any person shall make use of any profane, violent, vulgar, abusive or insulting language toward or about any other person in his presence, or hearing, which language in its common acceptation is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault shall be deemed guilty of a breach of the peace, *****" Ark. Stats. (1947) Sec. 41-1412.

It is respondent's contention that the acts of violence, the mass picketing, the blocking of ingress and egress to the plant, the following of the plant manager and the workers, the anonymous telephone calls to the home of the plant manager, and the persistent coercion, intimidation, applied force, insults and epithets thrown at the workers in a loud and boisterous manner cannot be equated as peaceful and truthful dissemination of free speech. Publicity as well as other means of persuasion could be used, but it is unlawful to use force, intimidation and

coercion in order to give publicity to the strikers' cause.

The above acts and conduct constituted a criminal offense under Section 41-1412 of the Arkansas Statutes.

In State of Arkansas V. Moser, 33 Ark. 140, the court held an indictment good which charged the defendant with saying to W. T. Moser, "Go to hell, goddam you," which language was calculated to anger the said Moser.

In Ruffin V. State, 207 Ark. 672, the defendant was convicted of a breach of peace for making the following proposition to a young, eighteen-year-old lady.

"I would give you \$10.00 to take you out . . . I would take you out tonight and love you up, and I would give you \$10.00 . . ."

She testified that the words of Ruffin were insulting to her and made her extremely nervous.

See also 34 A L R 580.

In Moore V. State, 50 Ark. 25, an indictment founded upon the statute was construed and the court at page 27 said:

"The Act recognizes the right of a person, not only to be safe, but to feel safe;*****"

See also the case of *Holmes V. State, 187 Ark. 136*.

(See dissenting opinion of Judge Smith.)

The defendants were not only called scabs of all kind, but in particular, "big yellow scab," (R 139), "fuzzy-headed scabs," "slaves," "damn fools," "filthy face," (R 140)

"fools," (R 143), "fat scab," and "low cut dress," and "big earring girl," (R 147), and one worker was maligned on account of pregnancy. (R 136).

It is self evident, taking into consideration the manner of the speakers, the relations of the parties, and the circumstances under which the words were spoken, that the words were spoken for the very purpose of insulting the workers and causing a breach of the peace. We call the court's attention to the testimony of James Youngdahl, Jerome Bill Becker and Woodrow Chandler.

James Youngdahl testified that there was no question that the workers were called scabs in a group of 12, 13 or 14. (R 42). He was asked if he was called a scab would he consider that an insult?

"A. Yes, sir, to me it would be an insult." (R 43).

Jerome Bill Becker, testified,

"I think — I would say it is an insult for someone to be called a scab or be a scab." (R 62).

He stated that if a group of people assembled on strike and were standing, hollering and jeering at another group coming out hollering, "dirty scab, pony tailed scab, fat scab," and their attitude looking belligerent, that the group being hollered at, should be insulted. (R 69).

"Q. Well, then what is the purpose of your crowd hollering that, to insult them?"

A. Yes, I _____." (R 69-70).

Woodrow Chandler, also testified that the purpose of hurling the word "scab" at the workers was to insult them. (R 89).

In Cantwell V. Connecticut, 60 S. Ct. 900; 310 U. S. 296, the court, in considering a common law breach of the peace, stated: —

"Cantwell's conduct, in the view of the court below, considered apart from the effect of his communication upon his hearers, did not amount to a breach of the peace. One may, however, be guilty of the offense if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended. Decisions to this effect are many, but examination discloses that, in practically all, the provocative language which was held to amount to a breach of the peace consisted of profane, indecent, or abusive remarks directed to the person of the hearer. Resort to epithets or personal abuse is not in any proper sense communication of information or opinion safeguarded by the Constitution, and its punishment as a criminal act would raise no question under that instrument.

We find in the instant case no assault or threatening of bodily harm, no truculent bearing, no intentional discourtesy, no personal abuse." 60 S. Ct. 906.

The court in *Milk Wagon Drivers Union V. Meadowmoor Dairies, supra*, at 61 S. Ct. 555, said: —

"It is not for us to make an independent valuation of the testimony before the master. We have not only his findings but his findings authenticated by the state of Illinois speaking through her supreme court. We can reject such a determination only if we can say that it is so without warrant as to be a palpable

evasion of the constitutional guarantee here invoked. The place to resolve conflicts in the testimony and in its interpretation was in the Illinois courts and not here. To substitute our judgment for that of the state court is to transcend the limits of our authority. And to do so in the name of the Fourteenth Amendment in a matter peculiarly touching the local policy of a state regarding violence tends to discredit the great immunities of the Bill of Rights.

See:

Local Union No. 10, United Ass'n., of Journeymen V. Graham, 73 S. Ct. 585, 345 U. S. 192; Chaplinsky V. New Hampshire, 62 S. Ct. 766, 315 U. S. 568; International Brotherhood of Teamsters V. Vogt, 77 S. Ct. 1166.

The danger in these times from the coercive activities of those who want to organize a union, and who in their fanatical desire, would do violence, and abuse and insult those who do not wish to join a union, if they do not agree with them, is thrown into sharp focus here. The strikers by their coercive activities were depriving the employees of their equal right to exercise their liberties; that is, the "freedom of unorganized labor to bargain individually" and to "refuse to join or affiliate with a labor union." Ark. Stats. (1947) Sec. 81-201, Amendment No. 34 to Arkansas Constitution.

D. Lewd and obscene, profane, libelous, insulting or fighting words are not protected by the 14th Amendment.

In the case of Chaplinsky V. New Hampshire, 62 S. Ct. 766, 315 U. S. 568, the defendant was charged with addressing the complainant as follows: —

“You are a God damned racketeer” and “a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists.”

Chaplinsky was distributing the literature of his sect on the streets of Rochester on a busy Saturday afternoon. Members of the local citizenry complained to the City Marshal, Bowering, that Chaplinsky was denouncing all religion as a “racket”. Chaplinsky was warned that the crowd was getting restless. Sometime later a disturbance occurred, and the traffic officer on duty at the busy intersection started with Chaplinsky for the police station, but did not inform him that he was under arrest or that he was going to be arrested. On the way they encountered Marshal Bowering who had been advised that a riot was under way, and was therefore hurrying to the scene. Bowering repeated his earlier warning to Chaplinsky who then addressed to Bowering the words set forth in the complaint.

Chaplinsky was convicted under a New Hampshire Statute which provided: —

"No person shall address any offensive, derisive or annoying word to any other person who is lawfully in any street or public place, nor call him by any offensive or derisive name. *****"

At the trial the court ruled as immaterial any testimony relating to appellant's mission "to preach the true facts of the Bible," his treatment at the hands of the crowd, and the alleged neglect of duty on the part of the police. This action was approved by the court below which held that neither provocation nor the truth of the evidence would constitute a defense to the charge. 62 S. Ct. 768.

The Court affirmed and said that lewd and obscene, profane, libelous and insulting or "fighting words" — those by their very utterance inflict injury or tend to incite an immediate breach of peace, raise no constitutional question, because such words are no essential part of an exposition of ideas and are of slight social value. 62 S. Ct. 769.

The court further said that the refusal of the State Court to admit evidence of provocation and evidence bearing on the truth or falsity of the utterances is open to no Constitutional objection. Whether the facts sought to be proved by such evidence constitute a defense to the charge or may be shown in mitigation are questions for the state court to determine. (62 S. Ct. 770).

Arkansas's Tranquility Statute (Ark. Stats. 1947.) Sec.

41-1412 is even more narrow in its terms than the New Hampshire Statute, for it makes it a criminal offense for any person to use any profane, violent, vulgar, abusive or insulting language toward another in his presence. The statute further provides that this language must in its common acceptance be calculated to arouse to anger the person to whom it is addressed.

In *Moore V. State*, 50 Ark. 25, the Court, in construing the above statute, had this to say about evidence that was offered by the defendant, "that language used by him on the occasion referred to in the indictment was in response to opprobrious language used by Willie of and concerning the defendant's father, and that Willie, without any provocation, was the first to use angry words."

"The evidence would not have gone to the extent of justification, or complete exculpation; for of course violent words cannot excuse like violent words. But the jury might consider the provocation in mitigation of the punishment. And this is manifestly what they did; for they have inflicted the lowest penalty." 50 Ark. 28.

The Supreme Court quoted extensively from *Chaplinsky* and stated that "A constitutional right to abuse, insult, slander, or intimidate others is nonexistent in this country. 226 Ark., 85.

E. The findings by the lower court and Supreme Court of Arkansas, that the defendants, in picketing Rainfair's Plant, resorted to violence, coercion and intimidation, and such other unlawful conduct as was calculated to cause a breach of the peace, is fully sustained by the evidence.

Every time the workers went to and from the plant, or go to lunch, or took a recess, the strikers would congregate along west edge of their lot and sometimes in Rowena Street, and engage in loud and offensive name calling, singing and shouting, directed at the workers. They were called "slaves", "cotton picking fools", scabs of all kind such as "dirty scabs", "pony tailed scabs", "fat scabs", "crazy scabs." This was done individually, in couples, by the entire group, and in dozens, in a loud and boisterous manner. When it got to be more than that it became "bedlam." (R 128)

They made slurring remarks, in a loud and boisterous manner, about the personal appearance of individual workers. They would make remarks about raising rocks in the yard and finding frogs and disagreeable looking animals that were finer than the appearance of the workers. (R 128)

They picked out individual workers and insulted and abused them by singling her out and calling her insulting

names which they thought fit her appearance and personality. They insulted Rubie Reynolds, who was pregnant, by hollering, "Get the hot water ready", and "I am coming to make another payment on the baby, call Dr. Beaton," and "Why you can work another hour until you go in the delivery room at least", and "There is no need in going up there now." When she came back they asked her did she go on a false alarm. (R 136). Corlis Jones was called a "big yellow scab." (R 139). Lorene Jones was called a "fuzzy-headed scab," "slave," "damned fool", and "filthy face," and one of the strikers spit at her three times through the plant window while she was working. (R 140-41). Ella Jane Clark was called "a scab," "pony tailed scab," and "fool." (R 143). Policeman Brown was called "a scab" because he was married to Annie Brown, who worked at the plant. (R 145). Geraldine Baker was called a "fat scab," and was called a "low-cut dress", and "big earring girl". They then hollered "Does Pete still like low-cut dresses and earrings?" (R 147). Dorothy Davis was called "a dumb scab", "cotton picking scab", and just all kinds of scabs. She lived in the country and they sang songs to her. "Born in a cotton field in Arkansas, the greenest gals we ever saw, working for Rainfair for seventy-five cents." (R 149).

The testimony of these eight ladies is illustrative of the conduct of the strikers toward all the employees. They

literally had to run a gauntlet of mass picketing, insults and abuse every time they went to and from work.

This conduct was set in a background of threats and of violence. During the first strike, Pete Bonady testified a striker said, "that she was going to wipe the sidewalk with me and send me back to Wisconsin because I was nothing but trash." (R 128).

On one occasion nails were strewn throughout Rainfair's parking lot, and about a week later roofing tacks were strewn on the Manager's driveway at home and in the driveways at the home of twelve girls who did not go on strike. (R 128-129).

They threatened to whip Jewell Newby and move the trailer she was living in. (R 92-96).

The second strike opened up with violence. The first thing the strikers did was to carry out their threats against Jewell Newby. In the dark hours of the night and while every body was asleep, except Jewell Newby, two strikers punctured the tires on Mrs. Newby's daughter's car, that was parked in front of her trailer. They were convicted. (R 93-94).

At 5:15 the same morning a five-foot black snake was found lying on the floor under a window that had been knocked out. (R 106).

Lee Hamrick testified that the reason he got out of

the Union was because some of them tried to get him to do violence and destroy property (R 189). On further examination he stated that it was not any one in the strike. (R 190). He then said,

"They wanted me to put snakes and stuff like that, in there. They asked me to, but I wouldn't do it."
(R 190).

One of the strikers told Jewell Newby if she would come outside of her trailer that she would whip her. (R 96). They made her move the trailer. (R 184).

The above violence and insulting conduct on the picket line created much nervousness and ill will between the workers and the strikers. The situation was highly explosive. The strikers were mad because the workers would not join with them in trying to organize the plant. The workers felt like they had the right to work, and if they did not want to join the union that was their business. The union withdrew their request for an election so the matter could not then be settled by a vote. (R 45).

The hatred that the strikers had for the workers is plainly shown by their actions and words. They became so worked up that they were willing to fight, insult, abuse, damage property, and recruit a person to throw snakes in the plant. This feeling was even reflected in the attitude of two young boys, after the injunction had been issued. They were Thomas Cobb, brother to Mildred Tacker, a

striker, and Jerry Hamrick, son of Lee Hamrick, a former striker. They broke and strew a large amount of milk bottles and coca cola bottles in Rowena Street and in the parking lot in front of the plant. When Thomas Cobb was asked why he did it, he said, "Pete did not treat his sister right." "Well, he wouldn't give her job back to her down at the plant." He also said he was mad at Mrs. Newby. "I didn't want to have nothing to do with Mrs. Newby. I knew she was trouble." (R 169).

This conduct is far from being a peaceful and truthful discussion of the rights of the strikers, and such conduct clearly comes within the power and duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of the persons involved. See *Thornhill v. Alabama*, *supra*, and the subsequent cases cited by Respondent in Par. A. (See page 17 et seq.) .

PETITIONERS' BRIEF

A. The use of the word "Scab" or variants of that term under the facts in this case is not protected activity.

The Petitioners argue that the use of the word "scab" is protected activity. They use forty (40) pages of their argument (P 28 - 69) to try to convince this Court that they have a constitutional right to abuse, insult, slander and intimidate the employees of ~~Rain~~fair. They spend much time and effort trying to prove that the use of the word "scab" does not amount to intimidation by insult.

We submit that their argument is beside the point because the parties themselves have placed the meaning on the word "scab" and have stated that the purpose of the persistent use of same was intended to insult the employees of Rainfair. (See testimony of Youngdahl, Becker and Chandler) (R 43-62-69 and 70).

Becker testified that there might be some one lower than a scab; that it is pretty low and that any one crossing a picket line should be called a scab. (R 90). Jewell Newby testified that "They called me a scab. Isn't that the lowest down name that you can be called? He says he doesn't want to be called a scab. I think it is insulting."

(R 100).

There are many cases holding that,

"It is a matter of common knowledge that the word 'scab' as a designation of a human being, is one of the most opprobrious and insulting in the English language."

See; Webster Internat'l Dict. Ed. 1922,
Third Century Dict. (R 89); U. S. V. Toliaferro,
290 Fed. Rpr. 214; Toliaferro V. U. S. 290 Fed.
Rpr. 906;

where court said, at page 908: —

"No one questions the right of a court of competent jurisdiction upon a proper showing to enjoin intimidation by insult."

See also; *State V. Johnson*, 18 P. (2d) 35; *Prince V. Socialistic Cooperative Pub. Ass'n.*, 64 N. Y. S. 285; *State V. Christie* 97 Vt. 461, 123 A. 849; 34 A. L. R. 577; 78 *Corpus Juris Sec. Page 586* under 'scab'. *Caterpillar Tractor Co. V. N. L. R. B. (7th Circuit)* 230 Fed. (2d) 357. *Evening Times P & P Co. V. American Newspaper Guild* 199A. 598; See *Syllabus* (8).

In The Caterpillar Tractor case the court said: —

"Perhaps no greater disruptive force can be found in the field of labor relations than that innate in the application of the term "scab" to one employee by his fellow workman. The term, when applied to one embraced in a labor group, bears an inescapable connotation of opprobriousness and vileness commonly recognized by all members of modern American Society." (358)

The employees were insulted and intimidated by the strikers who formed a combine to run the employees off the job. To get into a quarrel in the course of an argument on the picket line and use unseemly language is not ordinarily a matter which would justify an injunction.

but to combine with others to use profane and indecent language, in an attempt to humiliate those who are working and thus prevent them from working, is a very different thing. See *N. L. R. B. V. Longview Furniture Co.* (4th Circuit) 206 Fed. (2d) 274.

In *Truax V. Corregan*, 42 S. Ct. 124; 257 U. S. 312, the court condemned somewhat similar activities and said: —

"Violence could not have been more effective. It was moral coercion by illegal annoyance and obstruction, and it thus was plainly a conspiracy." 42 S. Ct. 128.

Most of the employees of Rainfair had been working since the plant opened. They did not want to join the Union. They should not be subjected to the persistent abuse and humiliation, by the strikers, because they did not agree with the strikers labor philosophy.

They were entitled to work, and bargain individually with Rainfair, and in so doing to be free from the persistent abuse and insults hurled by the strikers.

B. The Injunction was not too broad.

Petitioners argue at page 59 of their Brief that the all inclusive injunction entrenches upon their constitutional rights.

This should not present a very serious question for the background of violence, and the combining together of the

strikers in persistently hurling, profane, obscene and insulting spithets at the employees who were going to and from work, in an effort to humiliate and degrade them publicly, and prevent them from working, justified the injunction in the terms granted.

The breadth of said injunction was necessary to prevent future excesses and coercion, which, in the light of past conduct, may reasonably be anticipated.

Milk Wagon Drivers Union V. Meadowmoor Dairies, *supra.*, 132 A. L. R. 1221.

The proper procedure is for the Respondents to file a motion to modify the injunction in the trial court. If and when Respondents are able to show the trial court that peaceful picketing can be carried on by the Union; they are free to do so. The Union has not attempted to make such a showing.

Local Union No. 656 V. Mo. Pac. R. R. Co. 221 Ark. 509,
Smith V. F & C Engineering Co. 225 Ark. 699,
Hickinbotham V. Williams, Chancellor, The Law Reporter, Vol. 102. No. 15, p. 52, July 1, 1957.

C. The Injunction does not violate the Petitioners' Freedom of Assembly.

Petitioners argue at page 69 that their constitutional right of peaceable assembly has been violated. They were enjoined from "loitering and congregating around and un-

der the tent and upon the property." (R 15). The Union had rented this lot for thirty (30) days and it was here that the threats, and the obscene and insulting epithets were hurled at the employees. It was here that the mass picketing was done and the access, to and from the plant, obstructed.

Youngdahl said that what went on over there would be called "strike activity," or in a broad sense "picketing activity." (R 38). The illegal combination was planned and executed from this lot.

Their conduct was anything except peaceable assembly.

D. The Right of State to enjoin the Strikers activities has not been preempted by the N. L. R. B.

The Petitioners argue at pages 71-87 that the state court had no jurisdiction because of Taft-Hartley.

We have endeavored to demonstrate that from Thornhill down to date that it is the power and duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents, and that is what it did here.

We believe there is ample evidence of violence, destruction of property, intimidation by insults, and with a

snake and an unlawful combination to otherwise intimidate and coerce the employees who wanted to work. In other words, their activities were unlawful under Arkansas law.

The Union denies that the concerted activities are other than peaceable. So, the issue is drawn.

The Arkansas court found that the activities were unlawful under State law, and this court will not disturb that finding unless "it is so without warrant as to be a palpable invasion of the constitutional guaranties here invoked." See *Meadowmoor*, 61 S. Ct. 555.

Union contends that because they filed an unfair labor practice charge with N. L. R. B., that their activities were protected. See Petitioners' Brief (3-9). This question has been settled in *United Auto A. & A. I. W. V. Wisconsin*, 76 S. Ct. 794; 351 U. S. 266, where the court said: —

"As a general matter we have held that a State may not, in the furtherance of its public policy, enjoin conduct 'which has been made an 'unfair labor practice' under the federal statutes.' *Id.*, 348 U. S. at page 474, 75 S. Ct. at page 485, and cases cited. But our post-Taft-Hartley opinions have made it clear that this general rule does not take from the States power to prevent mass picketing, violence, and overt threats of violence."

Union complains that Rainfair would not recognize and bargain with it as the majority representative of the employees, yet the Union withdrew its request for an elec-

tion. (R 45). Rainfair should not be criticized for not recognizing the Union. Only 29 of the employees struck. It is very plain that the Union did not represent a majority of the workers. Had Rainfair recognized the Union it would have violated Arkansas' Freedom to Work Laws. It is not a violation of the Act for management to desire reasonable proof of majority Unionization. *North Electric Mfg. Co. V. N. L. R. B.* 123 Fed. (2d) 887, *N. L. R. B. V. Epstein*, 203 Fed. (2d) 482.

An election was held on October 19th, 1955, and the employees voted not to Unionize.

We submit that this question of preemption is not properly before this court. It was not raised in the trial court. (R 7 & 8 — 11 & 12).

There is no evidence in the record in regard to what happened before the Labor Board. It has been brought in here in the Petitioners' Brief for the first time. This was pointed out in Rainfair's Brief In Opposition to the Petition for Writ of Certiorari. (P 2).

The court was careful to point in *Amalgamated Meat Cutters V. Fairlawn Meats*, 77 S. Ct. 605 that,

"Petitioners objected throughout that jurisdiction of the National Labor Relations Board was exclusive."

See, also; *Amalgamated Clothing Workers V. Richman Brothers*, 75 S. Ct. 452, 348 U. S. 511.

This decision denies to the Federal Courts authority at the

instance of a Union to enjoin the issuance of a state injunction, leaving only the remedy of direct appeal, and limiting the preemption theory to the right of the Federal Courts at the instance of N. L. R. B. to enjoin state action which intrudes upon the area preempted by Congress.

It naturally follows that if the remedy is by direct appeal from the state court that the question of preemption must be first raised in the lower court. The Supreme Court of Arkansas notes in its opinion that this question was not raised in the lower court.

We submit that Supreme Court was correct in its findings that the whole pattern of conduct along the picket line discloses a design on the part of petitioners to intimidate and coerce their former fellow workers by persistent abuse, insults and conduct calculated to cause a breach of the peace and other unlawful results.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this court should affirm the judgment of the Arkansas Supreme Court.

Respectfully submitted,

J. L. Shaver,
Ben Block Building,
Wynne, Arkansas,

c/o Shaver & Shaver, Attorneys;
Ben Block Building,
Wynne, Arkansas.

Counsel for Respondents.

APPENDIX

Constitutional Provision Involved

No. 34 Rights Of Labor

"Sec. 1. Discrimination for or against union labor prohibited. No person shall be denied employment because of membership in or affiliation with or resignation from a labor union, or because of refusal to join or affiliate with a labor union; nor shall any corporation or individual or association of any kind enter into any contract, written or oral, to exclude from employment members of a labor union or persons who refuse to join a labor union, or because of resignation from a labor union; nor shall any person against his will be compelled to pay dues to any labor organization as a prerequisite to or condition of employment.

Sec. 2. Enforcement of amendment — Legislation authorized. — The General Assembly shall have power to enforce this article by appropriate legislation." See 1 Ark. Stats. (1947) P. 233.

Statutory Provisions Involved

Sec. 41-1412, 4 Ark. Stats. (1947) P. 61.

"Profane or abusive language as breach of the peace — Penalty. — If any person shall make use of any profane,

violent, vulgar, abusive or insulting language toward or about any other person in his presence or hearing, which language in its common acceptance is calculated to arouse to anger the person about or to whom it is spoken or addressed, or to cause a breach of the peace or an assault, shall be deemed guilty of a breach of the peace, and upon conviction thereof shall be punished by a fine of not less than five (\$5.00) nor more than two hundred dollars (\$200.00) or by imprisonment in the county jail for not less than one (1) nor more than six (6) months, and any person who shall be punished by fine only under the provisions of this act (41-1412 - 41-1414) and shall not pay said fine, or secure the payment thereof, to the satisfaction of the court before such person is released from custody, it shall be the duty of the officer having such person in custody to confine him in the county jail until such fine is paid at the rate of one dollar (\$1.00) per day. (Act Feb. 19, 1909, No. 30, Parg. 1, p. 73, C & M. Dig., Parg. 2774; Pope's Dig., Parg. 3479.)"

Sec. 81-201 and 202, 7 Ark. Stats. (1947) P. 314-315.

"Public Policy — Freedom to bargain. Freedom of organized labor to bargain collectively, and freedom of unorganized labor to bargain individually is declared to be the public policy of the State under Amendment No. 34 to the Constitution. (Acts 1947, No. 101, Parg. 1, P. 211.)" 81-201.

"Affiliation with or failure to join union as condition of

employment prohibited. — No person shall be denied employment because of membership in, or affiliation with, a labor union; nor shall any person be denied employment because of failure or refusal to join or affiliate with a labor union; nor shall any person, unless he shall voluntarily consent in writing to do so, be compelled to pay dues, or any other monetary consideration to any labor organization as a prerequisite to, or condition of, or continuance of, employment. (Acts 1947, No. 101, Parg. 2, P. 211)." 81-202.